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AUTHORIZING ABBREVIATED RECORDS  
IN REVIEWING ADMINISTRATIVE  
AGENCY PROCEEDINGS

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HEARING  
BEFORE  
SUBCOMMITTEE NO. 3  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
EIGHTY-FIFTH CONGRESS



FIRST SESSION  
ON  
**H. R. 6788**

—  
JUNE 27, 1957  
—

Printed for the use of the Committee on the Judiciary

Serial 6



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# AUTHORIZING ABBREVIATED RECORDS IN REVIEWING ADMINISTRATIVE AGENCY PROCEEDINGS

THURSDAY, JUNE 27, 1957

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 3 OF THE COMMITTEE ON THE JUDICIARY,  
Washington, D. C.

The subcommittee met at 2 p. m. in room 346, House Office Building, Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Present: Messrs. Edwin E. Willis, Jack B. Brooks, William M. Tuck, Laurence Curtis and Arch A. Moore, Jr.

Also present: Cyril F. Brickfield, counsel.

Mr. WILLIS. The subcommittee will come to order.

We will take up today bill H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

(H. R. 6788 follows:)

[H. R. 6788, 85th Cong., 1st sess.]

A BILL To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders."

"SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

"§ 2112. Record on review and enforcement of agency orders

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding. The record in such proceedings shall be certified and filed in or held for the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review proceedings."

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

"(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."



SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: "Until the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), are amended to read as follows: "If such person fails or neglects to obey such order of the Commission, or Board while the same is in effect, the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall file the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows:

"Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive."

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Post Office Department and thereupon the said Department shall file in the court the record, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside or modify the order of the Department."

SEC. 6. (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part."

(b) Subsections (b) and (c) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary."

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon

certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree."

SEC. 7. (a) The third sentence of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code."

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended, are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive."

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80) is amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901) are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part."

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28, United States Code."

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719), is amended to read as follows: "Within thirty days after the filing of an appeal, the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 13. (a) Subsection (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), is amended to read as follows:

"(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), are amended to read as follows:

"(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States



Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its members, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the record. \* \* \* Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28."

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended, are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended (49 Stat. 860), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 212 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Board, or any officer thereof designated by the Board for that purpose, and thereupon the Board shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of

title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order."

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024), is amended to read as follows:

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

SEC. 21. The third sentence of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code."

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner."

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding



the cause for rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record."

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287), is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in a part."

(b) The second and third paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued."

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 27. (a) The third sentence of paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows: "The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code."

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings."

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927), is amended to read as follows: "Within thirty days after the

filing of said appeal the Secretary shall file with the court the record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal."

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides."

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court the record of the proceedings before the Board with respect to the matter concerning which judicial review is sought, as provided in section 2112 of title 28, United States Code \* \* \* Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board."

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner, the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the record."

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

"SEC. 6. Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code."

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131), is amended to read as follows: "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order."

SEC. 32. The second and third sentences of subsection (b) of section 208 of the Federal Coal Mine Safety Act, as amended (66 Stat. 702), are amended to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

SEC. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564), are amended to read as follows: "Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of title 28, United States Code."

SEC. 34. The second and third sentences of section 9 of the Bank Holding Company Act of 1956 (70 Stat. 138) are amended to read as follows: "A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing



of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper."

SEC. 35. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

Mr. WILLIS. Last year we held hearings on a similar bill, and the hearings were printed. The printed evidence was circulated, and since that time we have received comments on this subject matter. Today we are prepared to hear further evidence and such comments as might be offered as a result of our efforts last year.

We are happy, indeed, to have with us Judge Albert B. Maris. Judge, we will be delighted to hear from you.

### TESTIMONY OF JUDGE ALBERT B. MARIS, UNITED STATES CIRCUIT JUDGE, PHILADELPHIA, PA.

Judge MARIS. Mr. Chairman, my name is Albert B. Maris. I am a circuit judge of the third judicial circuit stationed at Philadelphia and I am, and since 1944 have been, chairman of the Committee on Revision of the Laws of the Judicial Conference of the United States.

In 1953 the Judicial Conference referred to its Committee on Revision of the Laws a proposal that existing statutes be amended so as to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary and so as to authorize the use of the original papers in appropriate cases in lieu of a transcript, the papers to be returned to the agency upon the completion of the review proceedings.

The committee concluded that the proposal had real merit. In a great many such cases much of the record is not relevant to the questions actually raised on review and to include it, as the statutes now require, involves a substantial waste of time and money in preparing the transcript. Moreover it may well be found that substantial savings in time and money can be effected if authority is given to use the original papers on review instead of a transcript.

An examination of the statutes authorizing judicial review of orders of administrative agencies disclosed that many of them now specifically require a transcript of the entire record before the administrative agency to be filed by the agency in the court of appeals. The committee thought that these requirements should be eliminated except in those instances where for some other reason it is necessary to file the entire record.

The object could, perhaps, have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. But this would leave the law in confusion as to what specific provisions had been thus repealed by implication. We, therefore, became satisfied that in order to deal comprehensively with the problem it would be necessary to amend many of the existing statutes providing for review of agency orders by the courts of appeals.

In addition it seemed advisable to add a new section 2112 to title 28 of the United States Code which would confer rulemaking power in this field upon the courts of appeals with the approval of the Judicial Conference. Such a statute should, we believe, be modeled upon section 6 of the Hobbs Act of December 29, 1950 (5 U. S. C. 1036)

which was enacted upon the recommendation of the Judicial Conference, and the statute should be drawn in the light of the uniform rules adopted under the Hobbs Act by nearly all of the courts of appeals with the approval of the Judicial Conference.

The Committee on Revision of the Laws of the Judicial Conference accordingly prepared a tentative draft of such an amendatory statute and we submitted it to all the judges of the courts of appeals and to all the agencies involved for their study and suggestions.

We received a large number of constructive suggestions which we embodied in the revision of the bill which was introduced in the 84th Congress as H. R. 6682, and which was the subject of a hearing before your subcommittee on May 17, 1956. Discussions were had with many agency representatives, the bill has been approved in principle by the American Bar Association and it has been reintroduced, with minor changes, in the present Congress as H. R. 6788. It incorporates the recommendation of the President's Conference on Administrative Procedure in this field. It has, of course, been approved by the Judicial Conference of the United States.

May I briefly summarize the principal features of the bill:

It would add to title 28 of the United States Code a new section 2112, entitled "Record on Review and Enforcement of Agency Orders." The section included enforcement as well as review proceedings in the courts of appeals.

Subsection (a) of new section 2112 gives the courts of appeals power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings, unless the applicable statute makes specific provision on the subject. The general power granted by section 2112 (a), however, will render such specific statutory provisions unnecessary hereafter.

The American Bar Association and the Secretary of Agriculture have recommended that the proposed statute be amended so as to require the adoption of uniform rules on these subjects which shall be applicable in all courts of appeals. The proposal is to amend the bill so that the word "rules" in line 8 on page 2 would be expanded to read: "uniform rules applicable in all courts of appeals."

It is, of course, for Congress to decide whether to impose such a requirement. Certainly no one can deny that substantial uniformity in this regard is highly desirable. On the other hand there should, I believe, be some possibility of providing for special conditions in particular circuits when those conditions do not obtain generally. In this connection I would call attention to the fact that the procedure which the bill proposes, and which is taken directly from the Hobbs Act, of requiring approval of such rules by the Judicial Conference, has worked well under that act to produce substantial uniformity.

This result was achieved by the Judicial Conference by its recommending to the courts of appeals the adoption of a uniform rule prepared by a committee of the Conference. As a result all but one of the courts of appeals have now adopted that uniform rule with only minor changes. It would seem reasonable to suppose that the same desirable result could be achieved in the same way under the proposed bill without infringing the power of individual courts to make special provisions required by peculiar local conditions.



There is a small textual amendment which I should like to propose to the first sentence of subsection (a) of proposed section 2112. It follows a suggestion made by the Federal Power Commission. It is at the end of line 12 on page 2 to strike out the words "in which" and substitute therefor the words "to the extent that". This will make it clearer that the rules to be adopted by the courts of appeals may cover the matters of time of filing, manner of filing and contents of the record to the full extent that such matters or any of them are not specifically covered by applicable statutes.

Subsection (a) has been expanded in accordance with suggestions made at the hearing on May 17, 1956, to provide that the rules of court may authorize the agency to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This has been a procedure which has recently been tried in some of the courts and has been found quite feasible and saving of time and money. To carry it out fully, however, I believe that two small additional amendments should be made.

The first amendment would be after the words "of the proceeding" in line 20, page 2, to strike out the period and insert in lieu thereof the words ", and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court."

The second amendment, which I think is needed in the interest of precision, would be in line 21, page 2, to insert the words "and transmitted to" after the words "or held for."

At the suggestion of the Securities and Exchange Commission subsection (a) also includes a provision that if proceedings have been instituted in two or more courts with respect to the same order the agency shall file the record in that court which in its judgment will be most convenient to the parties and the other courts shall then transfer their proceedings to it. This was intended to provide statutory authority for the procedure developed by the courts in this situation. (See *Columbia Oil & Gasoline Corp. v. Securities & Exch. Com.*, 3 Cir. 1943, 134 F. 2d 265; *L. J. Marquis & Co. v. Securities & Exch. Com.*, 2 Cir. 1943, 134 F. 2d 335; *L. J. Marquis & Co. v. Securities & Exch. Com.*, 3 Cir. 1943, 134 F. 2d 822.) It would provide a general rule applicable to all agency review cases which may present this perplexing problem. The use of the phrase "in its judgment" was intended to make clear that the choice of forum in such a case is in the discretion of the agency and is not reviewable except for clear abuse of discretion.

The American Bar Association and certain of the agencies have objected to the form of this provision, however. Their recommendation is that the court of appeals in which the first proceeding is instituted should have exclusive jurisdiction of all proceedings involving the same order, with authority to transfer all the proceedings to another court of appeals if that would best serve the convenience of the parties. I am satisfied that the Judicial Conference would not oppose this alternative proposal if the subcommittee thinks well of it. To incorporate it in the bill would call for two amendments.

The first would be in lines 2, 3, and 4, page 3, to strike out the words "in its judgment the proceedings may be carried on with the greatest

convenience to all the parties involved", and insert in lieu thereof the words "a proceeding with respect to such order was first instituted."

The second amendment would be to insert at the end of line 6, page 3, the following additional sentence: "For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals."

Subsection (b) of proposed section 2112 provides for the abbreviation of the record by inclusion only of such material as the rules of court may require, or as the parties, including parties permitted to intervene by the court, may stipulate, or as the court may designate by order. The stipulation or order may provide in an appropriate case, such as a petition for a consent decree enforcing a National Labor Relations Board order, that no record at all be filed.

May I point out that here is a situation where a great waste of time and public money can be eliminated. One of the principal reasons why it is important that the various statutes providing for review of particular agency orders be amended, as the bill proposes to do, is to eliminate the present requirement of many of them that the entire record be filed on review or enforcement in order to give the court of appeals jurisdiction to grant relief. We have in the courts of appeals a great many cases in which the National Labor Relations Board petitions the court to enter an enforcement decree which has been consented to by the respondent. The parties have agreed upon the decree but the Board must nonetheless spend the time and public money required to send the court a complete transcript of the record before the latter can enter the decree requested. There is absolutely no useful purpose served by this. It is a pure waste of time and money. Subsection (b) of proposed section 2112 would permit the filing of the record to be dispensed with in such a case and a decree to be entered upon the petition and consenting answer or stipulation.

The various provisions of subsection (b) to which I have referred will enable the parties to abbreviate the record by eliminating all material not relevant to the questions actually raised on review, with consequent saving of time and expense. Provision is made that additional portions of the record may be ordered by the court to be filed if found to be needed. In this connection the Secretary of Agriculture has quite properly suggested that the test as to whether additional portions of the record should be ordered filed should be that it is proper for the court to consider them and not that it must be shown to be necessary for the court to do so. I think the point is well taken and accordingly propose that in line 11 on page 4 the word "necessary" be stricken out and "proper" substituted for it.

If the correctness of a finding of fact is in issue subsection (b) requires all the evidence to be included in the record except such as the parties by stipulation agree to omit as wholly immaterial to the questioned finding. This will enable the court to perform its duty in such a case under section 10 (c) of the Administrative Procedure Act to "review the whole record or such portions thereof as may be cited by any party."

Certain of the agencies represented to our committee that in some cases it would be much more costly of time and money and seriously delay the proceedings to attempt to abbreviate the record than to send it all to the court of appeals and they accordingly opposed any



compulsory provision for abbreviation by rule or order without their consent. We believe that there is merit in this point and subsection (b) as originally drawn accordingly included a proviso giving the agencies the right, at their option, to file the entire record in those courts which, in view of their use of the appendix or modified printed record system, do not require the entire record to be printed.

Following the original drafting of the bill it has developed that as the result of recent rule changes no court of appeals now requires the entire record to be printed. This limitation upon the scope of this particular provision may, therefore, properly be deleted, and the provision made universal, as the American Bar Association and the agencies have suggested. In addition the bar association has suggested that the petitioner for review and the respondent in enforcement proceedings should also have the option to require the entire proceedings to constitute the record on review or enforcement. I am in full accord with this suggestion which is obviously fair.

Both changes can be accomplished by striking out in lines 15, 16, and 17 on page 4 the words: "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the" and inserting in lieu thereof the word "The", and by inserting immediately before the word "file" in line 19, page 4, the words "and if so requested by the petitioner for review or respondent in enforcement shall,".

Subsection (c) authorizes the transmittal of the original papers, instead of certified copies, as the record in review and enforcement proceedings. As originally drawn this was to be compulsory if the rules or orders of the court so provided and optional with the agencies in the absence of rules or orders. A number of the agencies pointed out to our committee that their records were public records which were required to be kept in their offices open to public inspection; also that in many cases an agency must retain the original papers in a proceeding before it for use in connection with another related case not on review. The agencies strongly urged that the compulsory feature of the original papers provision be eliminated. Our committee acquiesced and eliminated this feature from the bill which now authorizes the transmittal of the original papers as the record solely at the option of the agency. The bill provides, however, that this may apply to a part of the record also, so that the agency may transmit some original papers and certified copies of others.

The bill requires the return of any original papers at the conclusion of the case and this has now been broadened to permit the return also of certified copies which were included in the record. Certain agencies informed our committee that they could make use of such copies if returned and their return will relieve a serious storage problem in the offices of the clerks of the courts of appeals.

The bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of such agency orders as are by law reviewable by the district courts, such as exclusion and deportation orders. Deputy Attorney General Rogers has suggested that this be made explicit in proposed section 2112. I think this is an excellent suggestion. To carry it out I suggest that the bill be amended on page 5, line 13, by striking out

the quotation marks at the end of the line and inserting the following additional paragraph:

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

As I have stated, an examination of the statutes providing for the enforcement or review of particular agency orders indicated that most of them would require amendment to bring them into harmony with the provisions of proposed section 2112. Many of the statutes require the entire record before the agency to be filed. Some of them also provide that the court gets jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired until the filing of the transcript of the record.

We believe that the latter provision is illogical and unwise, illogical since it places it within the power of the agency to delay the acquisition of full jurisdiction by the court, and unwise since it raises a serious question as to the extent of the court's power to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time the record is actually filed.

The bill accordingly follows the pattern of the latest congressional enactment on the subject, the Hobbs Act of December 29, 1950, relating to the review of orders of the Federal Communications Commission and certain other agencies, by proposing to amend the various statutes to provide in all cases that the reviewing court shall acquire jurisdiction upon the filing of the petition for review. In the case of the Federal Trade Commission Act, the Clayton Act, the Packers and Stockyards Act, the National Labor Relations Act, the Federal Power Act, and the Natural Gas Act the existing law provides that the agency may modify or set aside its order after a petition for review has been filed and up to the time of filing of the record. The Judicial Conference agrees with the agencies that this power should be retained. The bill, therefore, proposes to amend these statutes so that, although jurisdiction shall be acquired by the court upon the filing of a petition for review, the jurisdiction shall not become exclusive until the filing of the record.

Certain perfecting amendments of the various statutes providing for the review or enforcement of orders of particular agencies have been included in sections 3 to 34 of the bill. Thus it is provided that the clerk of the court shall transmit a copy of a petition for review to the agency concerned. This removes a present ambiguity on this point. Also "record" is substituted for "transcript" and in each case the record is required to be filed "as provided in section 2112 of title 28, United States Code", thus bringing into play all the provisions of that proposed section and rendering it unnecessary to repeat in each statute providing for judicial review the detailed provisions relating to the record which now appear in some of them. Since many of these existing provisions are inconsistent with the plan of section 2112 they are proposed to be eliminated by the amendatory sections of the bill.

At the hearing on May 17, 1956 I submitted a draft of H. R. 6682 in which the changes in existing law were indicated in accordance with the Ramseyer rule. H. R. 6788 is identical with H. R. 6682



except for (1) the addition in lines 14 to 21 on page 2 of the language with respect to filing a certified list of the materials comprising the record and holding the actual papers subject to call, (2) an amendment to section 22 to insert the words "of the industry committee" in line 25, page 20, and line 1, page 21, to conform to the amendment made by section 5 (f) of the act of August 12, 1955 (69 Stat. 712), and (3) to renumber section 33 as 35 and to add new sections 33 and 34 amending in accordance with the plan of the bill section 207 (b) of the International Claims Settlement Act of 1949 as added by the act of August 9, 1955 (69 Stat. 564), and section 9 of the Bank Holding Company Act of 1956 (70 Stat. 138), both of which were enacted after the original drafting of the bill.

The agencies, boards, commissions or officers whose orders are reviewable under the statutes proposed to be amended by sections 3 to 34 of the bill are the following:

- § 3. Federal Trade Commission
- § 4. Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System
- § 5. Postmaster General
- § 6. Secretary of Agriculture
- § 7. Contract Market Commission, Secretary of Agriculture
- § 8. Secretary of the Treasury
- § 9. Securities and Exchange Commission
- § 10. Securities and Exchange Commission
- § 11. Foreign Trade Zone Board
- § 12. Federal Communications Commission
- § 13. National Labor Relations Board
- § 14. Secretary of the Treasury
- § 15. Securities and Exchange Commission
- § 16. Federal Power Commission
- § 17. Federal Maritime Board, Secretary of Commerce
- § 18. Civil Aeronautics Board
- § 19. Federal Power Commission
- § 20. Secretary of Health, Education, and Welfare, Secretary of Agriculture
- § 21. Secretary of Health, Education, and Welfare
- § 22. Secretary of Labor
- § 23. Railroad Retirement Board
- § 24. Secretary of Agriculture
- § 25. Securities and Exchange Commission
- § 26. Securities and Exchange Commission
- § 27. Public Health Service
- § 28. Secretary of Agriculture
- § 29. Subversive Activities Control Board
- § 30. Detention Review Board
- § 31. Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission
- § 32. Federal Coal Mine Safety Review Board
- § 33. Attorney General (Executive Order 10644)
- § 34. Board of Governors of the Federal Reserve System

A number of these agencies have made suggestions for clarifying amendments to the sections with which they are respectively concerned. Many of these suggestions involve distinct improvements to the bill. The reasons for these amendments are explained in supporting memoranda which the agencies have filed with your committee and I need, therefore, not discuss those reasons here but will simply submit the text of those amendments proposed by the agencies which I am satisfied should be added to the bill.

Amendment to section 3 proposed by the Federal Trade Commission:

On page 6, line 10, insert after "therein" the words, "concurrently with the Commission until the filing of the record,".

Amendment to section 4 proposed by the Federal Trade Commission:

On page 7, line 21, insert after "therein," the words "concurrently with the Commission or Board until the filing of the record,".

These two amendments, while not in the exact terms proposed by the Commission, carry out its suggestion to remove any possible ambiguity as to the right of the Commission to modify or revoke an order under review prior to the filing of the record. At the same time the amendments do not interfere with the basic scheme of the bill to make clear in all cases that jurisdiction attaches in the court of appeals for the purpose of making interlocutory and procedural orders from the filing of the petition for review.

Amendments to section 6 proposed by the Secretary of Agriculture:

On page 9, line 16, strike out "(b) and (c)" and insert "(b), (c), and (d)", and on page 10, line 8, strike out the quotation marks at the end of the line and insert the following additional paragraph:

(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

Amendments to section 7 proposed by the Secretary of Agriculture:

On page 10, line 20, strike out "third sentence" and insert "third and fourth sentences", in line 21 strike out "is" and insert "are", and on page 11, line 3, insert the following additional sentence at the end of the line within the quotation marks.

The testimony and evidence taken or submitted before the said Commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

Amendment to section 16 proposed by the Federal Power Commission:

On page 17, line 6, strike out the period after "it" and insert "under the provisions of this Act."

Amendments to section 17 proposed by the Federal Maritime Board:

On page 17, lines 22, 23, and 24, strike out "Board" in each line and insert "Commission". This amendment is needed in order to bring into play the definition of "Commission" as comprehending both the Federal Maritime Board and the Secretary of Commerce which is set out in section 905 (e) of the Merchant Marine Act, 1936, as amended.

Amendment to section 19 proposed by the Federal Power Commission:

On page 18, line 22, strike out the period after "it" and insert "under the provisions of this Act."

Amendments to section 21 proposed by the Secretary of Health, Education, and Welfare:

On page 20, line 13, strike out "The third sentence" and insert "(a) The second and third sentences"; in line 15 strike out "is" and insert "are"; in line 16, immediately before "The Secretary", insert in the quotation "A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose."; and between lines 19 and 20 insert the following additional paragraph:

(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently."

Amendments to section 24 proposed by the Secretary of Agriculture:

On page 22, line 13, strike out "second and third" and insert "second, third and fourth"; and on page 23, line 4, strike out the quotation marks and insert the following additional paragraph:

The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

Amendments to section 27 proposed by the Secretary of Health, Education, and Welfare: On page 24, line 18, strike out "The third sentence of paragraph" and insert "Paragraph"; and in line 21, immediately before "The Surgeon", insert within the quotation the following:

(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose.

Amendments to section 32 proposed by the Federal Coal Mine Safety Board of Review and the Secretary of Health, Education, and Welfare: The Federal Coal Mine Safety Board of Review properly suggests that the present section 32 should be stricken out since the procedure upon review of the orders of that Board is not analogous to the other review proceedings covered by the bill. This seems clear upon consideration of the fact that these proceedings are purely adversary proceedings between parties before the Board and that the Board is not a party to the review proceeding. The Secretary of Health, Education, and Welfare, however, suggests that an additional section should be added to the bill to amplify section 207 (b) of the act of September 23, 1950, and that it may properly be inserted as a new section 32. Accordingly section 32 would be amended so as to read as follows:

SEC. 32. Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974), is amended by adding at the end of that subsection 3 additional sentences reading as follows: "The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part."

Finally, I should like to call attention to a few typographical errors in the bill which ought to be corrected by amendment.

On page 14, in line 21, and again in line 23, "members" should be "member".

On page 17, line 5, "find" should be "finding".

On page 19, line 19, "the court" should be inserted at the beginning of the line before "the record of the proceedings".

On page 20, line 4, the figure "1" should be stricken out between the parentheses and the letter "I" should be inserted in lieu thereof.



On page 22, line 12, "a" should be stricken out immediately before "part".

On page 26, line 23, a period should be inserted immediately after "Code".

Mr. WILLIS. We will recess for several minutes while we answer the rollcall.

(Short recess taken.)

Mr. WILLIS. The subcommittee will come to order.

Judge MARIS. Mr. Chairman, may I complete in a very few moments the statement I was making.

I should like to call attention to pages 20 to 24 of my statement, to a number of amendments which the various agencies have proposed and which our committee thinks are appropriate to be made to the bill. They are mostly perfecting amendments. They are set out there and need not be discussed, except perhaps one.

The Federal Coal Mine Safety Board of Review is concerned with amendments made by section 32 of the bill to their act. They point out that they are not the same kind of agency as the other agencies referred to here, that they are really an adjudicating agency. Their counsel is here and perhaps can state it a little better than I. They have an officer of the Government as one party and an individual in the mining industry is the other party and they adjudicate between those parties, the losing party having the right to take an appeal to the court of appeals, to which appeal the agency, this Board, is not a party. Therefore, they are more like the Tax Court than these other agencies, all of which are themselves parties on review. They suggest therefore that they be eliminated, and we think it proper that they should be eliminated and that section 32 as it now stands should be stricken from the bill.

But in my proposed amendments I have suggested that a new section 32 take its place related——

Mr. WILLIS. On what page of your statement is that?

Judge MARIS. The top of page 24, Mr. Chairman—a new section 32 proposed by the Secretary of Health, Education, and Welfare, to make some rather small perfecting amendments in one of his acts in this field be substituted, which then will not change the section numbering of the bill.

Then finally I have indicated on the last two pages some typographical errors which have been discovered in the bill which should be corrected.

The counsel for the Securities and Exchange Commission, who is present, has suggested by a memorandum which has been just very recently filed with your committee, that the four sections of the bill which relate to their agency should be each amended so as to make it clear that the agency has jurisdiction concurrent with the court of appeals to modify, amend, or revoke an order between the time the petition for review is filed and the time the record is filed. That is a provision which is in force with respect to a great many other agencies. It certainly is a proper provision, and it can be very readily accomplished in each of these sections by striking out the words "exclusive jurisdiction" and inserting in lieu thereof the words "jurisdiction, which, upon the filing of the record shall be exclusive."

Mr. CURTIS. With which of the four sections are you dealing?

Judge MARIS. The 4 sections are sections 10, 15, 25, and 26. It is the same amendment in each section. The language of each one is exactly the same.

Thank you, Mr. Chairman.

Mr. WILLIS. Judge, as I understand, the bill in its present form has the support of the Judicial Conference.

Judge MARIS. That is correct.

Mr. WILLIS. What about the variations and amendments which you have addressed yourself to today? May we assume that that has their approval, too?

Judge MARIS. You may assume that those have their approval. They are perfecting amendments, Mr. Chairman. The principal one, I should say, is the amendment in the case where a petition for review has been filed in the two different courts of appeals by different parties concerned with the same order. The bill provides that the agency shall decide which court shall have jurisdiction and file the record in that court. The proposed amendment is that the first court in which a petition is filed shall have jurisdiction of all of those petitions but with the right to transfer to some other court under the doctrine of forum non conveniens. That is a provision which I am certain the Judicial Conference would approve. There was discussion of that matter in the Judicial Conference. In fact, the members of the Conference said they would have preferred that but they thought that was not what would be desired, but it appears now that the agencies themselves think that would be a better provision. A number of them have suggested it. So I am sure that is all right, and I believe the other provisions are unquestionably satisfactory to the Judicial Conference. I am prepared so to state.

Mr. WILLIS. I understand from our counsel that the statements we received from several agencies since last year's hearings were submitted to you and that you studied them before you appeared today here. Is that correct?

Judge MARIS. That is correct. The suggested amendments which are in the latter part of my statement are the result of that study, Mr. Chairman, and are amendments which agencies have suggested by way of perfecting the bill, which we are satisfied are proper amendments and should be made. They come out of those memoranda which have been submitted to you and which you were good enough to let me look at.

Mr. WILLIS. I address you as Judge now. I think we can take your judgment that the statement you have made on the whole reflects the best views of yourself and the agencies alike. Would you go that far?

Judge MARIS. I think so, yes. There were very few suggestions made by any agency that we did not adopt. There were some that we thought were not needed or were slightly out of line or beyond the scope of the bill, but by and large the suggestions made by the agencies have been incorporated in the material which I am submitting to you, Mr. Chairman, except for the one from the SEC which I just heard of today and I am suggesting that orally.

Mr. WILLIS. I see there are some agency representatives here today. We have matters to take up, both executive and otherwise; I take it that the other witnesses are local witnesses from Washington. Is that correct?

Judge MARIS. There is a representative of the American Bar Association here also, Mr. Chairman.

Mr. WILLIS. Is he a local resident?



Judge MARIS. Yes, that is correct.

Mr. WILLIS. I want to meet your convenience now. Would you people necessarily want to amplify the statements which have been presented or would you be satisfied if they were accepted? Otherwise we would have to hear you later. I certainly want to give you a hearing if you want to go beyond the statements that you have presented.

## STATEMENT OF THOMAS G. MEEKER, GENERAL COUNSEL, SECURITIES AND EXCHANGE COMMISSION

Mr. MEEKER. Mr. Chairman, for the SEC all I would say is that the changes that Judge Maris has testified to here orally would more than meet the comments which the Commission has filed with the committee and I would see no purpose, unless the committee has questions to ask of me, of my testifying. I would just request that our comments be made a part of the record.

Mr. WILLIS. Thank you very much.

(The SEC memorandum follows:)

MEMORANDUM OF SECURITIES AND EXCHANGE COMMISSION ON H. R. 6788, 85TH CONGRESS, 1ST SESSION, A BILL TO AUTHORIZE THE ABBREVIATION OF THE RECORD ON THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BY THE COURTS OF APPEALS, ETC.

This Commission would be affected by sections 2, 9, 10, 15, 25, 26, and 33 of H. R. 6788 and these comments are limited to those sections.

We are in accord with the general objectives of the bill. We believe, however, that the bill should be amended so that the exclusive jurisdiction of a court of appeals will not attach to a particular proceeding until the filing of the record with the court by the Commission. In this respect the bill would not affect proceedings for review of actions of this Commission under the Securities Act of 1933, where the time the exclusive jurisdiction of the reviewing court attaches is not specified. It would affect review of Commission actions under the other laws the Commission administers. The Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 presently provide that the Court of Appeals with whom a petition for review is filed shall have exclusive jurisdiction upon the filing of the transcript of the record by the Commission. This generally occurs some days after the filing of the petition. Sections 10, 15, 25, and 26 of the bill would amend the court review provisions of those statutes to provide that upon the filing of a petition for review the court of appeals would have exclusive jurisdiction to affirm, modify or set aside the Commission's order in whole or in part. We believe that the word "record" should be substituted for the word "petition" in the last sentence of the proposed amendment contained in each of those sections, so that there would be no acceleration of the date of the exclusive jurisdiction of the court of appeals.

We are aware of no advantage to be gained by conferring exclusive jurisdiction on the court of appeals before the record is filed in that court, and we believe that in some instances this (1) might have the effect of depriving a party of the right to a rehearing before the Commission; (2) might be construed to deny the Commission the power to stay its own orders after the filing of a petition for review; and (3) may be inconsistent with the provisions of section 2 of the bill, which would authorize the Commission where a petition has been filed in more than one court of appeals to file the record in that court where the Commission believes the proceedings might be carried on with the greatest convenience to all the parties. These possibilities arise from the fact that the proceedings before the Commission often involve various persons entitled to seek review.

(1) Rule XII (e) of the Commission's Rules of Practice (17 C. F. R. sec. 201.12 (e)), permits the filing of a petition for rehearing within 5 days after entry of the order complained of. Under the bill in its present form if one of the parties to the proceeding should file a petition for review before another party files a petition for rehearing, the Commission may lack jurisdiction to entertain the petition

for rehearing for the reason that exclusive jurisdiction to modify or set aside the Commission's order in whole or in part would be vested in the court of appeals. This would deprive the Commission of the power to modify its order in light of objections or changed circumstances called to its attention by a petition for rehearing or otherwise. Modification of an order, of course, may sometimes eliminate the basis for further litigation. Moreover, since proceedings before the Commission frequently involve more than one issue, the Commission may be deprived of power to modify its own order with respect to an issue which is not involved in the petition for review.

(2) Applications to the Commission for stays pending appellate court review are frequently made after the issuance of Commission orders. The Commission's familiarity with the case at this stage gives it a peculiar advantage in passing upon such applications. Where such applications are presented to an appellate court, the court generally has the benefit of the Commission's prior determination on the question of a stay. This may no longer be true if the proposed amendment is construed to deprive the Commission of jurisdiction in the matter once a petition for review has been filed.

(3) The Federal securities statutes commonly permit court review proceedings to be instituted in either the Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the allegedly aggrieved person resides or has his principal place of business. See, e. g., section 24 (a) of the Public Utility Holding Company Act of 1935 (15 U. S. C., sec. 79x(a)). The proposed change may create a problem of construction with regard to the respective jurisdictions of the various courts of appeals where several petitions for review of a single Commission order are filed by various parties in different courts. Section 2 of the bill would amend title 28 of the United States Code by adding section 2112 (a), which would authorize the Commission to file the record in that court where the proceedings could be carried on with the greatest convenience to all the parties and would require the other courts to transfer the proceedings therein to the particular court in which the record was filed. This appears inconsistent with the language of the bill which would give the first court "exclusive jurisdiction" on the filing of the petition.

## STATEMENT OF WILLARD W. GATCHELL, GENERAL COUNSEL, FEDERAL POWER COMMISSION

Mr. GATCHELL. My name is Willard Gatchell and I am General Counsel of the Federal Power Commission. I would say that I endorse all that Judge Maris has said. We have submitted a report which the committee already has, and I think that what Judge Maris has stated here today is exactly what should be done in the bill.

Mr. WILLIS. Thank you.

Mr. GATCHELL. We have no desire to be heard further.

Mr. WILLIS. Do you have a prepared statement?

Mr. GATCHELL. Only the Commission's report.

(The FPC report follows:)

FEDERAL POWER COMMISSION REPORT ON H. R. 6788, 85TH CONGRESS, A BILL TO AUTHORIZE THE ABBREVIATION OF THE RECORD ON THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BY THE COURTS OF APPEALS AND THE REVIEW OR ENFORCEMENT OF SUCH ORDERS ON THE ORIGINAL PAPERS AND TO MAKE UNIFORM THE LAW RELATING TO THE RECORD ON REVIEW OR ENFORCEMENT OF SUCH ORDERS, AND FOR OTHER PURPOSES

Section 2 of this bill, which is drafted as an amendment to the United States Code (U. S. C.), would authorize the courts of appeals (with the approval of the Judicial Conference of the United States) to adopt rules prescribing "the time and manner of filing and the contents of the record" on review of orders of administrative agencies, including the Federal Power Commission; empower the agencies, when petitions for review of the same order are filed in two or more courts, to select the court in which the record shall be filed and the proceeding heard and decided; authorize abbreviation of the record by court rule, or stipulation of all parties, or by court order; permit transmittal of certified lists of materials comprising the record or certified true copies in lieu of originals, and provide



for the holding of the originals by the agencies and the ultimate return to such agencies of any originals or copies which may have been filed.

Sections 16 and 19 would respectively amend the review sections of the Federal Power Act and Natural Gas Act<sup>1</sup> to provide expressly that until the filing of the record in a court of appeals the Federal Power Commission can modify or set aside any order "in such manner as it shall deem proper."

Other sections of the act relating mostly to review provisions of statutes administered by other agencies will not be reported on herein.

In general this Commission is in sympathy with the apparent objectives of sections 2, 16, and 19 of the bill. However, it is not convinced of the necessity for express statutory authority as carried in those sections of the bill. In any event, the Commission believes that they should not be enacted unless certain of their provisions are amended. Our specific comments follow, in the order of the provisions to which they relate:

Page 2, lines 1-5: The bill should be redrafted as an amendment to an existing statute (or as a new statute), not as an amendment to the United States Code. The code is merely evidence of the statutes.

Page 2, lines 6-8: The advisability of making this part of the rulemaking power of the several courts of appeals dependent upon approval of the Judicial Conference, which is an extra-judicial advisory body, seems questionable.

Page 2, lines 8, 9, and 14: The bill should not authorize court rulemaking on (1) "time \* \* \* of filing," (2) "manner of filing," and (3) "contents of," the record, where existing statutory law covers 1 or 2 but not all 3 of those matters, for that would authorize court rules to supersede existing statutes which cover 1 or 2 but not all 3 topics. The need for clarification in this regard would seem to be indicated.

Page 2, line 20: The bill would require "the record" (which would mean the original and full record) to be certified and filed or held for the court of appeals. Some clarification of this particular language would seem to be necessary in order to eliminate any possible conflict with the provisions giving the courts power to prescribe rules on the same subject (p. 2, lines 6-14), particularly the provision for rules authorizing the filing of a certified list describing the materials comprising the record in lieu of filing the record itself (p. 2, lines 14-20), and also with the provision (p. 4, line 22, to p. 5, line 13) permitting true copies of the whole or parts of records to be filed in lieu of the original papers. This should be amended by permitting the agency to file in court only lists of the papers and documents comprising the record rather than either the original or a copy.

The Commission believes that it is particularly desirable that legislation on this subject facilitate the shortening of the record by agreement as provided in section 2 (c) of this bill (p. 3, line 24, to p. 4, line 8). In this connection the Commission believes that it would be desirable to further provide, where any question of the sufficiency of the evidence to support the findings or order is raised, that the party raising the question must bear the burden and expense of printing the record for the court except insofar as opposed parties are willing and able to agree to abbreviation of the portions to be printed.

With respect to sections 16 and 19 of the bill (relating to the Federal Power Act and the Natural Gas Act), it is the Commission's view that they are unnecessary and that their omission (and the omission of any corresponding provisions in other sections relating to other court-review statutes which may be no more necessary) would greatly simplify the bill. With specific reference to these sections it is presumed that the purported grant of power to this Commission to modify or set aside any finding or order "in such manner as it shall deem proper" is intended to be tied in with the other provisions of those statutes. Consequently, on page 17, line 5, and page 18, line 21, the words "under the provisions of this Act," should be inserted after the words "in part,". The word "find" on page 17, line 5, should be amended to read "finding".

However, legislation on this subject may not be necessary at this time because the entire matter can be handled adequately by court rules. For example, a number of the courts (CA 2d, 3d, 4th, 5th, 10th, and the District of Columbia circuit) have promulgated rules to facilitate the filing of agency records for review. There could readily be opportunity for further experimentation, which is possible under the statutes as they now stand, but in any event the present degree of flexibility in such matters should be preserved.

FEDERAL POWER COMMISSION,  
By JEROME K. KUYKENDALL, *Chairman*.

<sup>1</sup> These sections, unlike sec. 2 of the bill, are drafted as amendments to the statutes, not the United States Code.



**STATEMENT OF RAOUL BERGER, ESQ., CHAIRMAN, COMMITTEE  
ON JUDICIAL REVIEW, ADMINISTRATIVE LAW SECTION, AMERICAN  
BAR ASSOCIATION, WASHINGTON, D. C.**

Mr. BERGER. My name is Raoul Berger. I am here on behalf of the American bar association. I merely want to direct your attention to the action taken by the bar association which is reported in volume 43 of the American Bar Association Journal, 334.

Mr. WILLIS. Would you care to file a statement?

Mr. BERGER. I do not believe that is necessary. I may say that Judge Maris has very generously and fairly summarized the views of the association. He has accepted some. He was not sure that he could see his way to accept others. He is quite right in saying that your bill does have in its major principles the endorsement of the association.

Mr. WILLIS. Thank you.

Anyone else?

**STATEMENT OF ROBERT J. FREEHLING, GENERAL COUNSEL,  
FEDERAL COAL MINE BOARD OF REVIEW**

Mr. FREEHLING. My name is Robert J. Freehling, General Counsel of the Federal Coal Mine Safety Board of Review. I was not listed as a witness but I am here prepared to answer any questions. Judge Maris has suggested that the act be amended so that reference to our agency is deleted from the act. We have no further statement.

Mr. WILLIS. Anyone else?

This will conclude the hearings on this proposal. Let me say that we are very grateful for the coordinated work of all the agencies of the Government, the judicial branch and the American Bar Association. I think we have as much evidence in the record as we need and I think we can move forward.

Thank you very much.

(Whereupon, at 3:25 p. m., the subcommittee proceeded to the consideration of other business.)

(The following information was submitted:)

APRIL 5, 1957.

HON. SAM RAYBURN,

*Speaker of the House of Representatives,  
Washington, D. C.*

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States, I transmit herewith for the consideration of the Congress a draft of a bill concerning the record on review or enforcement of orders of administrative agencies by the courts of appeals.

The purpose of the proposed legislation is to promote economy in and to facilitate the review by the courts of appeals of orders of administrative agencies subject to review by the courts of appeals. It would permit the agencies pursuant to rules adopted by the several courts of appeals, with the approval of the Judicial Conference of the United States, to send to the court an abbreviated record where the whole record is not necessary and authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of review proceedings and to permit the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court all such materials transmitting the same or any part thereof to the court when and as required by the court.

The bill is the product of approximately 4 years' work by the Judicial Conference Committee on the Revision of the Laws, of which Circuit Judge Albert B. Maris of the Third Circuit is chairman, during the course of which affected agencies

have been consulted and views of the judges through the country solicited and considered. The Judicial Conference of the United States has approved the proposed legislation upon consideration of the report and recommendation of its committee.

The bill would add to chapter 133 of title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative agencies. Among the principal provisions of the new section are the following:

Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies in which the applicable statute does not specifically prescribe these matters. The rules could authorize the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court the materials transmitting all or parts thereof to the court as required. It would provide that if proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."

The bill would provide that the record to be filed in the court of appeals should consist of the order in question, the findings or report upon which it was based, and pleadings, evidence, and proceedings before the agency concerned, or such portions thereof as the rules of the court of appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding. The agency involved might at its option, if the rules of the court of appeals in which the proceeding was pending did not require the printing of the entire record, file in the court the entire record without abbreviation.

This is in accordance with the pattern of a late congressional enactment on the subject, the act of December 29, 1950, relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the court of appeals by delaying the filing of the record. Various other perfecting amendments of existing statutes are included in the bill.

It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the courts of appeals of orders of administrative agencies, will be conducive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted.

Sincerely yours,

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INTERSTATE COMMERCE COMMISSION,  
Washington, D. C., June 3, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR CHAIRMAN CELLER: Your letter of May 16, 1957, requesting an expression of views on a bill (H. R. 6788) introduced by you to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the court of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, has been referred to our committee on legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

The purpose of H. R. 6788 is clearly stated in its title as quoted above. Except for an occasional case arising under section 11 of the Clayton Antitrust Act (15 U. S. C. 21), this bill would not affect the review of orders of the Interstate Commerce Commission. The majority of the orders of this Commission are



issued under the Interstate Commerce Act, and, under the provisions of section 1336, title 28, of the United States Code, are reviewable by three-judge United States district courts instead of by United States courts of appeal as in the case of orders of many of the other administrative agencies.

It is noted that section 2 of the bill would provide, among other things, that where proceedings have been instituted in two or more courts of appeal with respect to the same order of the administrative agency, the agency concerned shall file the record in that one of such courts in which, in its judgment, the proceedings may be carried on with the greatest convenience to all of the parties involved. This section would further provide that the other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed by the agency concerned.

While we wholeheartedly favor having such multiple actions determined by a single court, we do not believe that it would be desirable, in such cases, for the defendant agency to have the privilege and duty of determining in which court actions against it shall be determined. It would seem preferable that some arrangement be devised whereby such a determination shall be made by the judiciary.

Subject to the foregoing reservation, we believe that enactment of H. R. 6788 would be desirable.

Respectfully submitted.

OWEN CLARKE, *Chairman,*  
ANTHONY ARPAIA,  
ROBERT W. MINOR,  
*Committee on Legislation.*

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FEDERAL COAL MINE SAFETY BOARD OF REVIEW,  
*Washington, D. C., June 4, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Reference your letter dated May 16, 1957, relating to H. R. 6788, the Board has requested that I inform you as to its views on this proposed legislation.

The Board fully agrees with the general purposes of the bill, that is, to reduce the costs and simplify the procedures in connection with appellate review. However, for the reasons indicated below, the Board seriously questions the language of the provisions applicable to this agency.

As you will recall, the Board is a completely independent agency created by title II of the Federal Coal Mine Safety Act (66 Stat. 692, et seq.). Its sole duty is quasi-judicial in nature, namely, to hear and determine applications filed with it by coal-mine operators seeking annulment or revision of, and temporary relief from, orders issued by inspectors or the Director of the United States Bureau of Mines, under the Federal Coal Mine Safety Act. The immediate parties to the adversary proceeding before the Board are the coal-mine operator who files the application and the Director of the United States Bureau of Mines. Either the operator or the Director can appeal directly from a Board order to the United States court of appeals for the circuit in which the mine affected is located, and then to the Supreme Court of the United States. The Board itself is not a party to, nor does it participate in any manner in, the appellate proceeding.

Functionally, the Board is thus closely analogous to United States district court judges who, like the Board, are not parties to appeals from their own decisions. The Board is unlike most, if not all, the other agencies subject to H. R. 6788, such as the National Labor Relations Board, the Civil Aeronautics Board, and the Subversive Activities Control Board, which themselves participate in the appeals for review or enforcement of their own decisions and orders.

As to the record to be filed on appeal from a Board order, section 208 (b) of the Federal Coal Mine Safety Act (66 Stat. 702) now reads as follows:

"(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail, to the other party and to the Board. Upon receipt of such copy of a notice of appeal the Board shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal."

Section 32 of H. R. 6788 would amend the second and third sentences of section 208 (b) to read as follows: "Upon receipt of such copy of a notice of appeal the

Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

Section 2112 of title 28, United States Code, referred to above, is added by section 2 of H. R. 6788 and provides among other things:

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation."

The above language in section 2112, while not completely clear in its application to this agency, appears to imply that the Board would be required to participate in determining the scope or nature of the record to be filed on appeal. Such activity would, of course, directly conflict with the statutory position and functions of this agency. The Board, as already mentioned, is not a party to the appellate proceeding and, like United States district court judges, should not therefore be required to determine the record to be filed on appeal from its own order. Although a determination of the appellate court record may be consistent with the statutory duties of other agencies covered by H. R. 6788, it is wholly inconsistent with the status and functions of this Board under the Federal Coal Mine Safety Act.

It is also significant that section 32 of H. R. 6788 would amend the time within which the Board must file the record in the appellate court. As section 208 (b) of our act now reads, the Board must certify and file the complete transcript of record "promptly" upon receipt of notice of appeal. However, under section 32 of H. R. 6788, the word "promptly" would be deleted and the time for filing would be determined, as provided in the proposed section 2112 (a) of title 28, United States Code, by the rules of the several courts of appeal.

Needless to say, Congress emphasized the need for promptness in the Board's filing of the record on appeal (as well as in other Board actions) to assist in effectuating the basic purpose of the Federal Coal Mine Safety Act, that is, the prevention of major coal-mine disasters. While the provisions of H. R. 6788 might not prevent expeditious action by the Board, the specific mandate in the present law would have been deleted and, to that extent, the congressional purpose might be impaired.

The Board has considered whether any limited changes in the language of H. R. 6788 could be suggested, which would adequately resolve the problems discussed above. However, the core of this bill is set forth in the proposed section 2112 of title 28, United States Code; and that section appears to be broadly framed with reference to agencies differing in status from this Board. Therefore, rather extensive recasting would seem to be required.

In any event, it appears doubtful that the present operation of section 208 (b) of our act requires amendment in order to achieve the results sought by the proposed legislation. For example, there is little possibility that an appeal from a



Board order would be filed in more than one appellate court, because section 208 (a) of the present act expressly limits "judicial review" to "the United States court of appeals for the circuit in which the mine affected is located." As to excessive financial burdens on the parties, the cost of certifying the complete transcript of Board records has been so insignificant in each case appealed to date, that no charges have been assessed by the Board for this service. As to the burden on the courts, the size of Board records has been relatively small compared with those of other agencies, so that few, if any, storage difficulties have arisen in this regard. Moreover, under such existing rules as those in the Court of Appeals for the Fourth Circuit, the Board has recently filed merely a certified list of the materials in the record. And the abbreviation of the actual portions of the record considered by the court has likewise been accomplished under present court rules.

In view of the foregoing, you may wish to consider excepting this Board from the application of H. R. 6788. This result could be accomplished simply by deleting section 32 of the proposed bill.

The Board hopes that the above comments may prove of value to you.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your Committee.

Sincerely yours,

ROBERT J. FREEHLING,  
General Counsel.

DEPARTMENT OF AGRICULTURE,  
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 16, requesting the views of this Department with respect to H. R. 6788, 85th Congress, 1st session. We recommend the enactment of the bill provided that it is amended as herein suggested.

The main purpose of the bill is to authorize administrative agencies to abbreviate the administrative records to be reviewed in courts of appeals. We believe, on the basis of our experience, that generally it is more practicable to certify to the court the entire administrative record in a case. Unless a substantial portion of the administrative record can be omitted, e. g., a large block of pages in sequence from the transcript of the evidence, an attempt to abbreviate the record is wasteful of effort and productive only of relatively inconsequential results. Also in some cases the relevancy of substantial parts of the record cannot be known until the appellant's brief has been filed on appeal, setting forth the appellant's points or questions on which judicial review is sought. Hagglng by the parties with respect to the material to be included in the record, on appeal, may result in the need for extension of time, for filing the record, and resultant delays in the enforcement of the agency's order. In view of these circumstances, we believe that an agency and the interested parties should be permitted to stipulate with respect to an abbreviated record on appeal, but that the administrative agency should have the unqualified right to file the entire record in a proceeding if the agency deems that action to be appropriate.

Our views with respect to the provisions for an abbreviature of the record are consonant with the recommendations and report of the Conference on Administrative Procedure called by President Eisenhower on April 29, 1953. The Conference recommended that legislation be adopted authorizing the filing of an abbreviated record by an agency "unless such agency in its sole discretion elects to file the entire record \* \* \*." Recommendation A-2. The Conference further stated, at page 50 of its report, that "[a]lthough perhaps not strictly necessary, paragraph (a) of the recommendation, giving the agency the option of filing the entire record, is designed to make it clear beyond any doubt that no abbreviation will be required where the effort and expense involved in segregating those parts not necessary to be filed from the rest of the record is disproportionate to the benefits gained by a shortened record, or where, for any other reason, the agency considers it undesirable to abbreviate the record."

The bill provides that if the correctness of a finding of fact is in question, all of the evidence shall be included in the record unless the parties stipulate for the omission of certain evidence. However, we have had experience with a number of cases involving statutory construction where the issues had their rootage in extensive testimony, e. g., *Grant v. Benson* (229 F. 2d 765 (C. A. D. C.)), certiorari denied, 350 U. S. 1015) and in such cases, as well as those involving evidentiary

issues, we believe that it is essential that the agency have the right to certify the entire record.

The bill further provides on page 4, lines 15-21, that "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." We recommend that the qualifying words, "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court", be deleted. The courts do not require the printing of the entire record and, therefore, we do not believe that the qualifying language serves any useful purpose. Also, inasmuch as the judiciary is in favor of reducing the size of administrative records, there would seem to be no basis for a rule requiring the printing of the entire record. The relevant or material parts of the record, as selected or designated by the parties, are printed on appeal, but the rules are somewhat different with respect to the procedure to be followed in arriving at that result.

If the bill is amended to permit the agency, without qualification, to file the entire administrative record, we recommend the enactment of section 2 of the bill providing for abbreviated records, and, also, section 6 of the bill relating to the Packers and Stockyards Act, section 7 of the bill relating to the Commodity Exchange Act, section 20 (b) of the bill relating to the Federal Food, Drug, and Cosmetic Act, section 24 of the bill relating to the Federal Seed Act, section 28 of the bill relating to the Sugar Act of 1948, and section 31 of the bill relating to the act of December 29, 1950.

Our further recommendations relate to clarifying amendments.

We suggest that the word "uniform" be inserted just prior to the word "rules" on page 2, line 8, of the bill and that the words "applicable in all courts of appeals" be inserted after the word "rules". The preamble to the bill states that its purpose is to make "uniform" the law relating to the record on review or enforcement of administrative orders and, therefore, we believe that the bill should make it plain that the rules are to be "uniform".

We recommend that a comma be inserted after the word "shall" on page 3, line 1, of the bill and that the following phrase be inserted: "irrespective of any other applicable statutory provisions.". In view of the first sentence in paragraph (a) on page 2, i. e., that the courts of appeals shall have power to prescribe the time and manner of filing and the contents of the record where the "applicable statute does not specifically prescribe such time or manner of filing or contents of the record", we are not sure, under the present language of the bill, whether the provisions for transferring the proceedings to a single court where two or more actions are instituted in different courts of appeals would apply where the applicable statute contains some provisions in this respect. Our recommendation is designed to obviate that uncertainty.

We recommend that the word "or" on page 3, lines 13 and 20, be changed to "and". We believe that the material in subsections (1), (2), and (3) on page 3 of the bill would all be included in the record on appeal, and, therefore, subsections (1), (2), and (3) should not be in the disjunctive.

We recommend that the word "stipulation" on page 3, lines 16 and 17, be changed to "designation". Otherwise, if the rules of the court do not "require" that certain material be included in the record, and if all of the parties do not stipulate with respect to the inclusion of certain material, it would require a motion in court to include the matter in the record, unless, of course, the material happened to be included within the category of material which could be designated irrespective of the provisions of subsections (1), (2), and (3) of section 2 (b) of the bill. If this change is adopted, then we recommend that the sentence beginning on page 3, line 23, be amended to provide that "Such an order, or a stipulation by the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding filed with the agency, board, commission or officer concerned or in the court in any such proceeding may provide in an appropriate case that no record need be filed in the court of appeals."

We recommend that the word "necessary" on page 4, line 11, of the bill be changed to "desirable" or "appropriate" so that the court will not be unduly restricted in permitting additional portions of the record to be certified.

We recommend that "Subsections (b) and (c)" on page 9, line 16, of the bill be changed to "Subsections (b), (c), and (d)", and that the following paragraph be inserted after line 8 on page 10:



"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

The purpose of this recommendation is to eliminate, in paragraph (d) of section 204 of the Packers and Stockyards Act, the reference to the record being "duly certified \* \* \* as aforesaid," inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the words "third sentence" on page 10, line 20, of the bill be changed to "third and fourth sentences," that the word "is" on page 10, line 21, be changed to "are", and that the following sentence be inserted following the sentence ending on page 11, line 3: "The testimony and evidence taken or submitted before the said commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case." The purpose of this recommendation is to eliminate the words "duly certified \* \* \* as aforesaid" from the fourth sentence of section 6 (a) of the Commodity Exchange Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the phrase "the weight of evidence, shall in like manner be conclusive" on page 11, line 15, of the bill be changed to the terminology appearing on page 8, lines 12-15, i. e., "substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive." We believe that the original phrase "the weight of evidence" was intended by Congress to mean the "substantial weight of evidence" rather than the "greater weight of evidence." The United States Court of Appeals for the Seventh Circuit has applied the phrase "the weight of evidence" substantially the same as the familiar substantial evidence test. See *Great Western Food Distributors v. Brannan* (201 F. 2d 476, 479-480, certiorari denied, 345 U. S. 997). The court held that it "would seem, then, that the function of this court is something other than that of mechanically reweighing the evidence to ascertain in which direction it preponderates; it is rather to review the record with the purpose of determining whether the finder of the fact was justified, i. e., acted reasonably, in concluding that the evidence, including the demeanor of the witnesses, the reasonable inferences drawn therefrom and other pertinent circumstances, supported his findings" (ibid.). Although we do not believe that this clarifying amendment is essential, we believe that inasmuch as this section is to be amended in other respects, it would be appropriate to enact this proposed amendment at the same time. Also, the phrase "the weight of the evidence" in the seventh sentence of section 6 (a) of the Commodity Exchange Act (42 Stat. 1001) should be amended in the same manner.

We recommend that the words "second and third" on page 22, line 13, of the bill be changed to "second, third, and fourth," and that the following paragraph be inserted on page 23, following line 4, of the bill:

"The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

The purpose of this recommendation is to eliminate the words "duly certified \* \* \* as aforesaid" from the fourth paragraph of section 410 of the Federal Seed Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We believe that the enactment of the bill would not require any additional appropriation.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON, *Secretary.*

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FEDERAL MARITIME BOARD,  
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 16, 1957, for the views of the Federal Maritime Board with respect to H. R. 6788, a bill to authorize the abbreviation of the record on the review or enforcement of orders of

administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The bill would amend chapter 133 of title 28 of the United States Code by adding a new section 2112, which would govern the time and manner of filing, and the contents of, the record to be filed in United States courts of appeals, and the venue of such courts, in proceedings instituted in such courts to review or enforce orders of United States agencies, boards, commissions, and officers. The bill would also amend statutes conferring jurisdiction on such courts to review and enforce such orders to make the time of filing the petition to review or enforce the order the uniform time for the attaching of jurisdiction. Under some such statutes, jurisdiction does not now attach until the record is filed.

The new section 2112 (which the bill would add to title 28 of the United States Code) would provide that the record to be filed in courts of appeals in proceedings to review or enforce orders of United States agencies, boards, commissions or officers shall consist of—

(a) The contents prescribed by the statute conferring jurisdiction on courts of appeals to review or enforce the order if such statute prescribes such contents; or

(b) The order to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission or officer, if (1) the statute conferring jurisdiction does not prescribe the contents of the record, and (2) the rules of the courts of appeals with venue do not require the printing of the entire record to be filed, and (3) the agency, board, commission, or officer elects to file all of the foregoing; or

(c) If the agency, board, commission, or officer is not eligible under (b) above to elect, or does not elect, to file all of the material there specified, such portions thereof as (1) the rules of the court of appeals with venue require, or (2) the parties by written stipulation, consistent with such rules, designate, or (3) the court upon motion of any party, or on its own motion, designates, but if the correctness of a finding of fact is in question, all the evidence shall be included except such portion thereof as the parties agree to omit.

The bill would authorize the courts of appeals, with the approval of the Judicial Conference of the United States, to make rules, not inconsistent with the foregoing provisions, with respect to the content of the record to be filed, and with respect to the time and manner of filing the record if the statute conferring jurisdiction does not prescribe the time and manner of filing. Since the foregoing provisions authorize the parties to abbreviate the record by stipulation consistent with the rules of the court, and authorize the court by order to designate the contents of the record, the possible area for the operation of such rules with respect to the contents of the record appear to be to limit abbreviation of the record by the parties and to state the limits within which the court would require abbreviation if the agency, board, commission or officer is not eligible to elect, or does not elect, to file the entire record of the proceedings before it without abbreviation.

The new section would further provide that the agency, board, commission, or officer may transmit to the court of appeals either the original papers comprising the record to be filed or certified true copies of such papers. The apparent purpose of this provision is to authorize the agency, board, commission, or officer to file the original papers in those circumstances in which it considers that the expense of preparing copies would be unjustified. It is evidently intended, nevertheless, that if the bill is enacted the Judicial Conference of the United States might approve rules of court which might under some circumstances require the printing of the entire record to be filed, because subsection (b) of the new section provides that, if the rules of court require the printing of the entire record to be filed, the agency, board, commission, or officer shall not have the option of filing the entire record of the proceedings before it without abbreviation.

Sections 29 and 30 of the Shipping Act, 1916, as amended (46 U. S. C. 828-829), make orders issued by the Federal Maritime Board under that act enforceable in the United States district courts. The bill, therefore, would not apply to proceedings to enforce such orders.

Public Law 901, 81st Congress (the act of December 29, 1950, 64 Stat. 1129) (5 U. S. C. 1031-1042), however, confers on the United States courts of appeals jurisdiction to review orders issued by the Federal Maritime Board under the Shipping Act, 1916, and provides (sec. 6) that the record to be filed in the court of appeals in such proceedings shall consist of the pleadings, evidence, and proceedings before the agency or such portions thereof as the rules of court require or



such portions as the parties, with the approval of the court of appeals, agree upon in writing.

The bill would amend section 6 of Public Law 901 to provide that the record to be filed shall be the record provided for in section 2112 of title 28, United States Code. This amendment would change existing statutory law in the following respect: (1) It would require that all of the evidence be included in the record if the correctness of a finding of fact is in question; and (2) it would give the Board the option of filing the entire record of the proceedings before it without abbreviation in those cases in which the rules of court do not require the printing of the entire record to be filed.

The bill would amend section 611 of the Merchant Marine Act, 1936, as amended which provides that, if an operating-differential subsidy contractor believes that the United States has without just cause defaulted upon, or cancelled, his operating-differential subsidy contract, he may apply to the Maritime Commission, setting forth his contentions, for permission to transfer his vessels to foreign registry, and if the Commission, after hearing, finds affirmatively on the issue, it shall grant the application, but otherwise deny it. Section 611 further provides that, if the application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia by filing in that court a written petition, a copy of which shall be served upon any member of the Commission, or upon any officer thereof designated for that purpose, and the Commission shall thereupon file in the court a transcript of the record upon which the order was entered and upon such filing the court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause and to affirm or set aside such order.

Section 17 of the bill would amend this section 611 of the 1936 act to provide that a copy of the petition for review shall be served on a member of the Board rather than on a member of the Commission, that the record provided for in section 2112 of title 28 of the United States Code shall be filed in the court rather than a transcript of the record upon which the order was entered, and that the jurisdiction of the court shall attach when the petition for review is filed rather than when the record is filed.

Reorganization Plan No. 21 of 1950 abolished the Maritime Commission, created the Federal Maritime Board, and divided between the Federal Maritime Board and the Secretary of Commerce the functions the Maritime Commission had under various statutes. Under the plan, the functions under section 611 of the Merchant Marine Act, 1936, would be exercised in some cases by the Federal Maritime Board and in others by the Secretary of Commerce. Under section 905 (e) of the Merchant Marine Act, 1936, as amended (Public Law 586, 82d Cong.; 66 Stat. 760), the word "Commission," as used in the Merchant Marine Act, 1936, means the Federal Maritime Board or the Secretary of Commerce, as the context may require to conform to. Reorganization Plan 21 of 1950. Section 17 should be amended to let this definition operate properly under Reorganization Plan No. 21. This can be accomplished simply by restoring in section 17 of the bill the word "Commission" in place of the word "Board" wherever it appears in the section.

The bill would provide for abbreviated records to be filed in courts of appeals in proceedings in those courts to review or enforce orders of agencies, boards, commissions, or officers of the United States and for review or enforcement of such orders on the basis of the original papers, and would make the time of the filing of the petition for review the time for the attaching of the court's jurisdiction.

If section 17 of the bill is amended as suggested, the Federal Maritime Board would have no objection to enactment of the bill.

Sincerely yours,

CLARENCE G. MORSE, *Chairman.*

JUNE 6, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CELLER: This is in further reply to your letter of May 16, 1957, acknowledged May 22, 1957, requesting our comment on H. R. 6788, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The Board believes that the preparation and filing of the complete transcript of the record of the administrative proceeding often involves needless work and expense and sometimes serves to delay the review proceeding. Accordingly, the Board looks with favor upon any proposal which will serve to eliminate these burdens and delays. While we note that many of the changes suggested by the bill have already been incorporated into the existing rules of the various circuit courts of appeals, these rules would appear to be applicable only to the extent that an underlying statutory provision will permit. Legislation along the lines of H. R. 6788 will provide the necessary statutory authority and further will provide for various contingencies not covered by the existing rules.

H. R. 6788 has been examined from the standpoint of its relation to review proceedings involving Civil Aeronautics Board orders, and in general we endorse the objectives and provisions of the bill. However, we have one change to suggest. While the Board favors a procedure which permits the filing of an abbreviated record either by stipulation or by court order, we recommend that the bill be amended so as to permit an administrative agency, when it believes it advisable, to file a complete record. Since the burden and expense of preparing and filing the record customarily is placed on the agency, it is believed that it should be left to agency option whether a complete record should be filed with the reviewing court, whether negotiations should be entered into looking toward a stipulated record, or whether an order should be sought from the court for leave to file less than the full record. Experience indicates that, in many of the Board's cases, greater time and effort may be required on the part of all concerned in attempting to determine the content of an abbreviated record than would be expended in the present procedure of certifying the entire transcript. Further, negotiation or other procedures looking toward an abbreviated record could be used for purposes of delay. The agency's own interest in eliminating needless work and expense will serve to insure that stipulations will be entered into whenever feasible, or application made to the reviewing court for leave to file less than the complete record in an appropriate case.

Accordingly, the Board recommends that the sentence beginning on line 15, page 4 of H. R. 6788, and ending on line 21, page 4, be stricken and the following substituted: "The agency, board, commission, or officer concerned shall have an option without regard to the foregoing provisions of this subsection, to file in the court in which a proceeding is pending the entire record of the proceedings before it without abbreviation."

Subject to the above recommendation for amendment, the Board endorses the enactment of H. R. 6788.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES R. DURFEE, *Chairman.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
Washington, June 7, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of May 16, 1957, for a report on H. R. 6788, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The provisions of the bill are entirely of a technical legal character and, except for several technical changes not pertinent to this Department, are the same as the provisions of H. R. 6682, 84th Congress, on which bill this Department reported to your committee last year. Our comments on the present bill are therefore the same as our comments on the earlier bill, except for necessary changes in section, page, and line references and except for drawing attention to an omission in the nature of a typographical error. These changes are set forth in a revision sheet attached to the enclosed copy of our last year's comments.

Subject to the committee's consideration of the suggestions made in the enclosed memorandum, we would have no objection to enactment of the bill.



The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOTT L. RICHARDSON,  
*Assistant Secretary.*

Enclosures.

JULY 11, 1956.

COMMENTS ON H. R. 6682, A BILL TO AUTHORIZE THE ABBREVIATION OF THE RECORD ON THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BY THE COURTS OF APPEALS AND THE REVIEW OR ENFORCEMENT OF SUCH ORDERS ON THE ORIGINAL PAPERS AND TO MAKE UNIFORM THE LAW RELATING TO THE RECORD ON REVIEW OR ENFORCEMENT OF SUCH ORDERS, AND FOR OTHER PURPOSES

We understand that the bill embodies a legislative proposal of the Committee on Revision of the Laws of the Judicial Conference of the United States. It reflects to some extent suggestions made by this Department to Judge Albert B. Maris, Chairman of that Committee, in connection with a preliminary draft of the bill.

The whole matter of records and briefs on review of administrative action has also been under study by the President's Conference on Administrative Procedure. We cooperated with the Conference's Committee on Judicial Review. The Committee's recommendations adopted by the Conference appear on pages 4 and 5, Report of the Conference on Administrative Procedure. These recommendations concern only the filing of an abbreviated record and do not also concern rule-prescribing power of the courts of appeals as to the time and manner of filing, and the contents of, the record, as the bill does. However, the President's Conference, in its comments on this matter, expressly stated that its recommendation "is not intended to constitute an exclusive prescription of the provisions of such a statute, nor is it intended to preclude the addition of other provisions, if such are determined to be desirable or necessary." It then called attention to the preliminary draft statute of the Committee on Revision of Laws of the Judicial Conference. Within their scope the recommendations of the President's Conference are substantially in accord with the provisions of the bill.

Subject to the Committee's consideration of the comments and suggestions made below, the provisions of the bill, insofar as they involve the interests of this Department, would seem to constitute desirable steps toward facilitating judicial review of administrative action by courts of appeals and toward the promotion of uniformity in that respect.

Our specific comments on the provisions of the bill of concern to the Department are as follows:

1. Subsection (a) of the proposed title 28, United States Code, section 2112, which is in section 2 of the bill, would empower the United States courts of appeals, with respect to proceedings for judicial review of agency orders by such courts, to adopt rules prescribing the time and manner of filing, and the contents, of the record where the applicable statute does not specifically prescribe these requirements. In the case of this Department, this provision would apply to the following proceedings:

(a) Review—under section 701 (f) (1) of the Federal Food, Drug, and Cosmetic Act, as amended by section 21 of this bill—of orders to issue, amend, or repeal regulations under section 401, 403 (j), 404 (a), 406 (a) and (b), 501 (b), 502 (d), 502 (h), 504, or 604 of the Federal Food, Drug, and Cosmetic Act;

(b) Review of orders on tolerances for pesticide chemicals in or on raw agricultural commodities (sec. 408 (i) of the Federal Food, Drug, and Cosmetic Act, as amended by sec. 20 of this bill);

(c) Appeals from certain actions of the Surgeon General under the hospital and medical facilities construction program (sec. 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b)), as amended by sec. 27 of this bill);

(d) Review of certain actions of the Commissioner of Education relating to the construction of school facilities in areas affected by Federal activities (sec. 207 (b) of the act of September 23, 1950, as amended (20 U. S. C. 277 (b))).

2. Subsection (a) of the proposed section 2112 would, when judicial-review proceedings have been instituted in two or more courts of appeals with respect to the same agency order, require the agency to "file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" (presumably including the agency). The other courts would thereupon be required to transfer their cases to the court



in which the record was filed. The courts would seem to have no discretion in the matter.

In the light of experience, we believe that provisions for bringing together and in effect consolidating parallel review proceedings in different circuits involving the same administrative action are desirable from the point of view of conserving the time of the courts and administrative agencies avoiding unnecessary expense in filing two or more copies of the record, and avoiding delay, uncertainty, and confusion, and possible conflicts of opinion among coordinate courts. The committee may, however, wish to consider whether, as proposed by the bill, the provision should be mandatory upon the agency, whether the agency's judgment should be final, and whether the court selected should necessarily be one of the courts in which a review proceeding was theretofore commenced. A complication, moreover, may arise out of the fact that the record may already have been filed in one court, and the case heard and possibly even decided, by that court before judicial-review proceedings are commenced elsewhere.

One possible alternative would be to provide that the court in which a proceeding for judicial review of an agency order is first commenced shall have exclusive jurisdiction and that other courts shall transfer their cases to that court, except that the first court, upon application of the agency or of any other party in interest, may transfer all the proceedings (including those transferred to it from other courts) (a) to any other court of appeals stipulated by the parties or (b), in the absence of such stipulation, to any other court of appeals in which in the deciding court's judgment the convenience of all the parties would be best served.

3. Subsection (b) of the proposed section 2112 would authorize the use of an abbreviated record, in accordance with court rules, stipulation of the parties, or order of the court, but provides that if the rules of the court do not require the printing of the entire record in that court the agency may nevertheless, at its option, file the entire record of the proceedings before it without abbreviation.

These provisions are satisfactory to us in their present form.

4. Section 20 of the bill would amend section 408 (i) (2) and (3) of the Federal Food, Drug, and Cosmetic Act (relating to tolerances for pesticide chemicals in or on raw agricultural commodities) in three respects: A copy of the petition for judicial review filed with the court would have to be forthwith transmitted by the clerk of the court to the Secretary whose order is to be reviewed, instead of being "served" on the Secretary. Secondly, the time, manner, and contents of the administrative record to be filed with the court would have to conform to the proposed section 2112 of title 28 of the United States Code. Thirdly, the jurisdiction of the court would attach upon the filing of the petition for judicial review, not (as under present law) upon the filing of the record with the court.

We believe that these changes would be desirable improvements in the law, though we regard the first change above as largely one of form rather than of substance. The reference to "subsection (1)" on page 19, line 25, however, is a typographical error. It should read "subsection (l)."

5. Section 21 of the bill would amend section 701 (f) of the Federal Food, Drug, and Cosmetic Act to provide in effect that the filing and contents of the administrative record with the court shall be governed by the proposed section 2112 of title 21, United States Code. We believe that, in the interest of uniformity within the Federal Food, Drug, and Cosmetic Act the additional changes contained in section 20 of the bill, above referred to, should also be incorporated in section 21. We therefore suggest that section 21 be changed to read as follows:

"SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 371 (f)) are amended to read as follows: 'A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code.'

"(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 371 (f)) is amended to read as follows: 'Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.'

6. Similarly, we suggest that, in line with the above-mentioned changes, section 27 (a) of the bill (p. 24, lines 17-23), be changed to read as follows:

"SEC. 27. (a) Paragraph (1) as amended, of section 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b) (1)) is amended to read as follows:

" '(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was

submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose, and thereupon the Surgeon General shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.' "

7. Again, in order to make the section on review of actions of the Commissioner of Education consistent with these changes, we suggest the following changes which we believe are largely clarifying rather than additive of substantive law. Change section 33 in the bill (p. 28, lines 11-12) to section 34 and add a new section to read as follows:

"SEC. 33. Section 207 (b) of the Act of September 23, 1950, as amended (20 U. S. C. 277 (b)) is amended by adding at the end of that subsection the following: 'A copy of a notice of appeal shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of a notice of appeal with it, the court shall have jurisdiction to affirm or set aside the decision of the Commissioner in whole or in part.' "

REVISION SHEET TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE'S  
COMMENTS ON H. R. 6682, 84TH CONG., FOR H. R. 6788, 85TH CONG.

In comments on H. R. 6682:

(1) On page 3, part 4, second paragraph, delete the second and third sentences of that paragraph and substitute the following in place thereof: "Line 19 on page 19 contains a typographical error. That portion of the bill should read: 'the court the record,' etc. It is obvious that the two words italicized were omitted from the printed version of the bill. Also the reference "subsection (1)" on page 20, line 4, is a typographical error which should read "subsection (l)".

(2) On page 4, part 6, first paragraph, delete "17-23" and substitute in place thereof "18-24".

(3) Again on page 4, part 7, change, where used in that part, "33" to "35", "28" to "29" and "34" to "36".

FEDERAL TRADE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
Washington, June 11, 1957.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 16, 1957, inviting an expression of the views of this Commission upon H. R. 6788, 85th Congress, 1st session, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would add a new section to chapter 133 of title 28 of the United States Code and would amend the acts of various administrative agencies, thereby making uniform the law relating to the record on review or enforcement of orders of such agencies. The Commission generally is in accord with the purposes of the bill, but desires to call your attention to an inconsistency in the proposed amendments to the Federal Trade Commission Act and the Clayton Act, contained in sections 3 and 4 of the bill.

Section 3 (a) of the bill, amending the sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), would provide that "until the record in the proceeding has been filed in a court of appeals of the United States," the Commission may at any time modify or set aside its report or order to cease and desist. Section 3 (c) of the bill, amending subsection (d) of section 5, would provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions, in substance, are the same as the corresponding provisions of the present statute. They contemplate that the jurisdiction of the court will not attach until the record is filed. But section 3 (b) of the bill, amending the



third sentence of subsection (c) of section 5, would provide that the jurisdiction of the court of appeals would attach "Upon such filing of the petition," without reference to the filing of the record. The comparable provision of the present statute provides that such jurisdiction shall attach "upon such filing of the petition and transcript \* \* \*." We think that to remove this inconsistency the third sentence of subsection (c) of section 5 of the Federal Trade Commission Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill: "Upon such filing of the petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

We consider the present provisions of law, which afford the Commission an opportunity to consider and act upon petitions for reconsideration before court review, to be very desirable. They enable the Commission to correct inadvertent errors that occasionally occur, and are quite valuable in preventing unnecessary litigation through the opportunity for careful reconsideration in appropriate instances. We think it would be regrettable to have any inconsistency in, or uncertainty about, the continuance of these useful provisions of existing law.

For the same reasons, like observations are pertinent with reference to section 4 of the bill, amending section 11 of the Clayton Act, as amended (64 Stat. 1127). Section 4 (a) would amend the sixth sentence of the second paragraph of section 11 of the act so as to provide that "Until the record" is filed with a court of appeals the Commission may modify or set aside its report or order to cease and desist. Section 4 (d) would amend the fifth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions are substantially the same as the corresponding provisions of the present statute, and contemplate that the jurisdiction of the court will not attach until the record is filed. Section 4 (c) of the bill, however, would amend the third sentence of the fourth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals would attach "Upon the filing of such petition," without reference to the filing of the record.

In order to remove this apparent inconsistency, we think the third sentence of the fourth paragraph of section 11 of the Clayton Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill: "Upon the filing of such petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

We have only one further comment, which relates to the last sentence of subsection (b) of proposed section 2112 of title 28 of the United States Code, contained in section 2 of the proposed bill. That sentence is in the following language: "*If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court* the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation. [Italics supplied.]

The Commission is anxious to preserve the option of filing a transcript of the entire record in the court of appeals. While we believe the above language may accomplish this purpose, we see no need for the portion italicized above and suggest that it be stricken.

By direction of the Commission.

JOHN W. GWYNNE, *Chairman*.

N. B.—The Bureau of the Budget advises there is no objection to the submission of this report.



JUNE 10, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would authorize the several courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, boards, commissions, and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. It would also provide for abbreviation of such records pursuant to rules of court, stipulation of the parties, or court order. The bill would permit an agency which issued an order to file the original papers in lieu of a transcript and to regain possession of them upon completion of the proceedings in the court of appeals. It would also incorporate the foregoing provisions in a number of existing statutes dealing with review of administrative orders by courts of appeals.

The Department of Justice considers the proposal a laudable effort to eliminate unnecessary expenditures in time and money in the review of agency orders by the courts of appeals. Accordingly, it recommends enactment of the measure. It is noted that at its annual meeting in September 1956, the Judicial Conference reaffirmed its previously expressed approval of this legislation with a minor amendment.

Some concern has been expressed that the broad language of the proposed section 2112 (a) may possibly be construed to apply to certain proceedings not intended to be covered, for example, decisions of the Tax Court and administrative orders for the exclusion and deportation of aliens entered under the provisions of the Immigration and Nationality Act of 1952 (66 Stat. 1166; 8 U. S. C. A., 1101 et seq.). As you know, Tax Court decisions are presently subject to review by the courts of appeals pursuant to section 7482 of the Internal Revenue Code of 1954 (26 U. S. C., 7482); exclusion and deportation orders, to the extent that judicial review is permissible, are uniformly reviewable in the first instance in the district courts. The apprehension arises because of the broad language of section 2112 (a) that it shall apply to "all proceedings instituted in the courts of appeals to \* \* \* review \* \* \* orders of administrative agencies, boards, commissions and officers \* \* \*." In this connection it might be both desirable and appropriate to incorporate in the committee reports express language that the bill is not intended to apply to decisions of the Tax Court or to exclusion and deportation orders. Although there would appear to be little basis for believing that the bill in its present form could reasonably be construed to extend to such proceedings, it may nevertheless be wise to dispel any possible ambiguity in this regard.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,  
*Deputy Attorney General.*

AMERICAN BAR ASSOCIATION SUPPLEMENTAL REPORT OF THE SECTION OF ADMINISTRATIVE LAW, FEBRUARY 1957—No. 13

#### RECOMMENDATIONS

##### I

*Be it resolved*, That the American Bar Association supports legislation to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on their original papers and thereby to make uniform the law relating to the record on review or enforcement of such orders.

*Be it further resolved*, That the American Bar Association recommends legislation to include the following:

(1) A provision giving to the court of appeals, in which the first proceeding is instituted to enforce or review a given administrative order, exclusive jurisdiction of all appeals therefrom and to authorize said court, on motion of an interested party, to transfer said proceeding to any court of appeals which the parties stipulate, or absent such stipulation, to such court of appeals as said court determines will best serve the convenience of the parties.

(2) Provision that all rules adopted under the proposed act shall be uniform and shall apply without exception for different procedures under existing statutes.

(3) A provision to the following effect:

The record to be filed in the court of appeals in such a proceeding shall, at the option of any party thereto, consist of the entire record in said proceeding, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein; (2) as the parties to the administrative proceeding under review or enforcement and any intervenor in said court, by written stipulation filed with said court, may, consistently with the rules of said court, designate to be included therein; or (3) as the court upon motion of a party or, after a prehearing conference upon its own motion, may by order in such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If there is omitted from the record any portion of the proceedings before said agency, which the court subsequently determines to be necessary, the court may direct that such additional portion of said proceedings be filed as a supplement to the record. Unless ordered by said court, it shall not be necessary to print the record on petition for review or enforcement of such order, except that appellant shall print as part of the appendix to his brief the pertinent pleadings and docket entries, the order sought to be reviewed or enforced, together with any findings of fact, conclusions of law and opinion of said agency.

(4) That the foregoing legislation apply to proceedings instituted in a three-judge United States district court to enforce or review an order of an administrative agency.

## II

*Be it resolved*, That the American Bar Association recommend to the Judicial Conference that the several United States courts of appeals be urged to adopt a uniform rule relating to the review of orders of administrative agencies whereby the court, in any review or enforcement proceeding of orders made by administrative agencies, may in its discretion direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and agreements, if any, made by the parties as to any of the matters considered; and in the absence of such agreements, the court, may in its discretion make an order simplifying the issues or, in furtherance of convenience or to avoid prejudice, if may order a separate, preliminary hearing of any issue or issues, including any issue or issues of law which can be segregated from issues of fact. Such order or orders when entered shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

## REPORT

### RECOMMENDATION I

(a) *Abbreviation of Record and Uniformity of Record on Review*.—This portion of the first resolution was adopted by the section unanimously at the Dallas meeting. The proposal for legislation originated with the Judicial Conference of the United States. Our recommendations are consistent with the purposes and objects of the Judicial Conference proposal.

As we all know, there are 57 varieties of court appeals, review and enforcement proceedings covering the decisions of administrative agencies. Each is regulated by its own statute; and many times where the courts have authority to establish rules the courts of appeals have adopted widely varying rules to govern the court review of agency decisions. In the view of the Judicial Conference, legislation is needed to untangle the snarl; simplify procedure; permit abbreviation of lengthy records; and bring uniformity to this field of law. With that view we agree.

The remaining portions of the resolution were unanimously adopted by the council of the section of administrative law at this midwinter meeting under authority delegated to the council by the section (Bylaws, Section of Administra-

tive Law, art. VI, sec. 1). These are proposed at this time in order to enable the association to appear effectively in connection with studies of the field undertaken by the House Committee on the Judiciary, which studies are expected to eventuate in legislation during the present session of Congress.

(b) *Forum in cases of multiple appeals.*—At the present time, multiple review proceedings of the same agency action may be instituted in several circuits. The proposal of the resolution would enable a court to determine the forum of greatest convenience to the parties, thereby overcoming some cases of hardship under the present law, and would eliminate the power of an agency alone to select the forum for review of its own action.

(c) *Uniformity of rules on review of agency proceedings.*—The need for uniformity in this field is obvious to us all.

(d) *Contents of record on review of agency decisions.*—Under present procedure in some circuits, in cases of review of agency action when the entire record is filed with the court of appeals, it must be printed. If the agency be trusted to edit the record in order to reduce printing costs, it may send either entirely too much or entirely too little to the court with resulting expense and delay. Thus far the best means found for meeting the problem consists of permitting the filing of the entire record as made in the agency (or such portions as the court shall require or the parties stipulate to be included), the parties then being permitted to select the portions to be printed in one way or another, subject to the control of the court, of course.

(e) *Three-judge court review of agency decisions.*—That the foregoing improvements should extend to review or enforcement proceedings before three-judge United States district courts, as in Interstate Commerce Commission cases frequently involving multiple appeals and tremendous records, is obvious.

#### RECOMMENDATION II

*Simplification and separation of issues.*—Presently on review of agency action some circuits provide for prehearing conferences in the appellate courts and simplification of issues, but only under agreement by the parties. The courts have not felt themselves authorized to adopt simplification procedures absent agreement. This proposal would extend to the courts of appeals power to avail themselves of the well-known benefits of prehearing procedure, including separate hearings on particular issues, which are now effectively utilized by the district courts.

Respectfully submitted.

HAROLD L. RUSSELL,  
*Chairman, Section of Administrative Law.*





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## APPENDIX

Hearings, 84th Congress, on H. R. 6682





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# APPEAL OF ADMINISTRATIVE AGENCY DECISIONS

THURSDAY, MAY 17, 1956

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 3 OF THE  
COMMITTEE ON THE JUDICIARY,  
Washington, D. C.

The subcommittee met, pursuant to notice, at 10:30 a. m., in room 327, House Office Building, the Honorable James M. Quigley presiding, for consideration of H. R. 6682.

Present: Congressmen Jack B. Brooks (acting chairman), James M. Quigley, Shepard J. Crumpacker, and Dean P. Taylor.

Also present: Cyril F. Brickfield, committee counsel, and Bessie M. Orcutt, administrative assistant.

(H. R. 6682 is as follows:)

[H. R. 6682, 84th Cong. 1st sess.]

A BILL To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders."

SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

"§ 2112. Record on review and enforcement of agency orders

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. The record in such proceedings shall be certified and filed in the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence and proceedings before the agency, board, commission or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or



officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission or officer is in question all of the evidence before the agency, board, commission or officer shall be included in the record except such as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review proceedings.

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

"(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: "Until the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), are amended to read as follows:

"If such person fails to neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall file the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows:

"Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive."

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Post Office Department and thereupon the said department shall file in the court the record, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the department."

SEC. 6. (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part."

(b) Subsections (b) and (c) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree."

SEC. 7. (a) The third sentence of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall thereupon file in the court



"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

SEC. 21. The third sentence of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code."

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner."

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record."



SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287), is amended to read as follows:

"(c) Until the record of such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part."

(b) The second and third paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record of such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued."

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisors Act of 1940, as amended (54 Stat. 855), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 27. (a) The third sentence of paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows: "The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code."

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings."

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948, 61 Stat. 927, is amended to read as follows: "Within thirty days after the filing of said appeal the Secretary shall file with the court the record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal."

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States court of appeals for the circuit wherein the petitioner resides."

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court the record of the proceedings before the Board with respect to the matter concerning which judicial review is sought, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board."

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the record."

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

"SEC. 6. Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code."

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131), is amended to read as follows: "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order."

SEC. 32. The second and third sentences of subsection (b) of section 208 of the Federal Coal Mine Safety Act, as amended (66 Stat. 702), are amended to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

SEC. 33. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

Mr. QUIGLEY. The subcommittee will please come to order. This is a hearing on H. R. 6682, a bill recommended by the Judicial Conference of the United States. The executive communication which was submitted by the Administrative Office of the United States Courts will be inserted at this point.

(The executive communication follows:)

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,  
Washington, D. C., May 23, 1955.

HON. SAM RAYBURN,  
Speaker of the House of Representatives,  
Washington, D. C.

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States, I transmit herewith for the consideration of the Congress a draft of a bill concerning



the record on review or enforcement of orders of administrative agencies by the courts of appeals.

The bill enclosed was recommended by the Judicial Conference at a meeting held March 24 and 25, 1955. The action of the Judicial Conference was based upon a study and reports extending over about a year and a half by a committee of the Conference on Revision of the Laws, consisting of Circuit Judge Albert B. Maris of the Third Circuit, chairman, and District Judges Clarence G. Galston of the Eastern District of New York and William F. Smith of the District of New Jersey. At the meeting of the Judicial Conference in September 1953, Judge Maris submitted for the committee an interim report to the effect summarized in the report of the meeting of the Judicial Conference as follows:

"The committee believes that it would be desirable to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary and to authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of the review proceedings. This would require an amendment of existing statutes."

The committee submitted to the conference a tentative draft of a bill and recommended that it be submitted to the circuit judges and the agencies concerned for their consideration and suggestions. The conference authorized the committee to include in its tentative draft provisions covering petitions for enforcement of administrative agency orders as well as proceedings to review such orders, and with this amendment it authorized the proposed bill to be circulated among the judges of the courts of appeals and the agencies concerned (pp. 25-26 of the September 1953 report of the Judicial Conference).

At the meeting of the Judicial Conference of the United States in April 1954, the Committee on Revision of the Laws reported that it had submitted to the judges of the courts of appeals and the agencies concerned the preliminary draft of a bill to authorize an abbreviated record on the review of agency orders and that a large number of constructive suggestions had been received, many of which were embodied in the revised draft of bill. The report explained the principal features of the bill, including changes made in the revision. The Judicial Conference approved the revised draft of bill for recommendation to the Congress (pp. 17-18 of the April 1954 report of the Judicial Conference).

At the meeting of the Judicial Conference held in March of 1955, the committee reported that conferences with some of the administrative agencies and developments subsequent to the meeting of the Judicial Conference in April 1954 indicated a need for some further changes in the bill. The committee therefore submitted a form of bill further revised and recommended that the Judicial Conference give its approval. The conference did so and it is that revised bill which is herewith submitted for the consideration of the Congress.

The bill would add to chapter 133 of title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative agencies. Among the principal provisions of the new section are the following:

Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies in which the applicable statute does not specifically prescribe these matters. It would provide that if proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."

The bill would provide that the record to be filed in the court of appeals should consist of the order in question, the findings or report upon which it was based, and pleadings, evidence and proceedings before the agency concerned, or such portions thereof as the rules of the court of appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding. The agency involved might at



its option, if the rules of the court of appeals in which the proceeding was pending did not require the printing of the entire record, file in the court the entire record without abbreviation.

The bill would provide that the agency concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies certified by an authorized officer of the agency. Any original papers thus transmitted to the court of appeals are to be returned to the agency upon the final determination of the review or enforcement proceeding. Pending the final determination any such papers under the bill may be returned by the court temporarily to the custody of the agency concerned if needed for the transaction of the public business. Certified copies of papers included may be returned to the agency upon the final determination of the proceedings in the court of appeals.

Following these general provisions in the bill are a considerable number of sections amending provisions of present statutes relating to the judicial review or enforcement of orders of administrative agencies in order to bring them into harmony with the provisions of the proposed section 2112. Under the proposed bill the court of appeals would acquire jurisdiction of the proceeding upon the filing of the petition for review, although the record may not be filed until later. This is in accordance with the pattern of the latest congressional enactment on the subject, the act of December 29, 1950, relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the court of appeals by delaying the filing of the record. Various other perfecting amendments of existing statutes are included in the bill.

It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the courts of appeals of orders of administrative agencies, will be conducive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted.

Sincerely yours,

HENRY P. CHANDLER.

Mr. QUIGLEY. The first witness before the committee this morning will be the Honorable Judge Maris of Philadelphia.

Judge Maris.

**STATEMENT OF HON. ALBERT B. MARIS, UNITED STATES CIRCUIT JUDGE, U. S. COURT OF APPEALS, THIRD CIRCUIT, PHILADELPHIA, PA.**

Judge MARIS. Gentlemen, my name is Albert B. Maris. I am a circuit judge of the third judicial circuit, and I am, and have been for a number of years, Chairman of the Committee on Revision of the Laws of the Judicial Conference of the United States.

This is a somewhat technical appearing bill. In order that I may be precise, I have noted down my comments, and I would like, if I may, to just follow my manuscript pretty closely.

In 1953, the Judicial Conference referred to its committee on revision of the laws a proposal that existing statutes be amended so as to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary, and so as to authorize the use of the original papers in appropriate cases in lieu of a transcript, the papers to be returned to the agency upon the completion of the review proceedings.

Mr. CRUMPACKER. Do you have copies of that statement, Judge?

Judge MARIS. Unfortunately, I do not because I got this memorandum up a little hurriedly from various other papers.

The committee concluded that the proposal had real merit. In a great many such cases, much of the record is not relevant to the questions actually raised on review and to include it, as the statutes now require, involves a substantial waste of time and money in preparing the transcript. Moreover, it may well be found that substantial savings in time and money can be effected if authority is given to use the original papers on review instead of a transcript.

An examination of the statutes authorizing judicial review of orders of administrative agencies disclosed that many of them now specifically require a transcript of the entire record before the administrative agency to be filed by the agency in the court of appeals. The committee thought that these requirements should be eliminated except in those instances where for some reason it is necessary to file the entire record.

The object could, perhaps, have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. But this would leave the law in confusion as to what specific provisions had been thus repealed by implication.

In order to deal comprehensively with the problem we became satisfied that it would be necessary to amend many of the existing statutes providing for review of agency orders by courts of appeals.

In addition, it seems advisable to add a new section 2112 to title 28, which would confer rulemaking power in this field upon the courts of appeals with the approval of the Judicial Conference. Such a statute should, we believe, be modeled upon section 6 of the act of December 29, 1950 (5 U. S. C. 1036), which was enacted upon the recommendation of the Judicial Conference, and in the light of the uniform rules adopted thereunder by nearly all of the courts of appeals with the approval of the Conference.

The Committee on Revision of the Laws of the Conference accordingly prepared a tentative draft of such an amendatory statute, and we submitted it to all the judges of the courts of appeals and to all the agencies involved for their study and their suggestions.

We received a large number of constructive suggestions which we embodied in the revision of the bill which has been introduced as H. R. 6682. Discussions were had with many agency representatives, and I am aware at this moment of no objections to the bill. It incorporates the recommendations of the President's Conference on Administrative Procedure in this field. It has, of course, been approved by the Judicial Conference of the United States.

I want to just briefly summarize what the bill does. The bill would add to title 28, United States Code, a new section 2112 entitled "Record on Review and Enforcement of Agency Orders." The section includes enforcement as well as review proceedings. Subsection (a) gives the courts of appeals power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings, unless the applicable statute makes specific provision on the subject. The general power granted by section 2112 (a), however, will render such specific statutory provisions unnecessary hereafter.

At the suggestion of the Securities and Exchange Commission, subsection (a) includes a provision that if proceedings have been instituted in two or more courts with respect to the same order, the



agency shall file the record in that court which, in its judgment, will be most convenient to the parties, and the other courts shall then transfer their proceedings to it. That is a situation which can arise under the existing provisions. If persons in litigation which is involved live in different circuits, and each of them wants to review the same order, in that situation if proceedings have been instituted in two or more courts with respect to the same order, someone must determine in which of those courts the record shall be filed, and in which of those courts the proceedings shall be carried on. The bill, as I have said, at the suggestion of the Securities and Exchange Commission, provides that the agency shall file the record in that court which, in its judgment, will be the most convenient to the parties involved, and that the other courts in which proceedings to review the same order may have been filed, shall then transfer their proceedings to that court.

Mr. CRUMPACKER. I noticed that provision in glancing through the bill. I have some considerable doubt about the wisdom of it. Can you explain a little more fully the reasons for this provision?

Judge MARIS. The reasons are merely because some procedure must be followed to solve this difficulty where you have, as I said, an order made by the Securities and Exchange Commission involving some security, say, in which a number of persons are interested, living in several different circuits. Now, the venue for review is that a person files a petition for review in the circuit in which he lives, so that there might be petitions pending for review of the same order, petitions filed at the same time in the second circuit, the third circuit, and in the ninth circuit.

Obviously, all three courts would not at the same time review the same order. That would be an absurd waste of time and a duplication of effort, and a burden on the court, so that the courts heretofore extra-legally have worked out a procedure under which the court in which the transcript is filed by the agency shall continue jurisdiction, and the other courts will transfer their proceedings to that court.

Mr. TAYLOR. Is that the procedure now, Judge Maris?

Judge MARIS. That is the procedure that has been developed by the courts of the United States, only there is no statutory provision for it.

Mr. TAYLOR. Why do we want to wander from that method?

Judge MARIS. Because, and this is the Judicial Conference's view, that gave the SEC unlimited authority without any rule or any standard to select the forum, because the statute provides that the court in which a petition to review an SEC order is filed, shall acquire jurisdiction upon the filing of the transcript in that court. That gave, you see, the SEC complete authority to confer jurisdiction on whichever one of these courts it wished, without any standard or rule.

Mr. TAYLOR. Well, does not this still leave it that way?

Judge MARIS. Yes, but it sets up the standard that they shall file it in that court which will be most convenient to the parties involved.

Mr. TAYLOR. Yes, but the agency determines that.

Judge MARIS. Yes. There was a good deal of discussion of that point in the Judicial Conference, but the difficulty was, how can the courts determine it when there are 2 or 3 courts which have petitions pending. One court says, "We want it," and another court may say



"we want it," whereas the the agency does have the obligation to file the record, and the procedure has been in the past that the agency did file the record, and we thought the best way to change that would be to put upon the agency a definite standard by which they could determine the right venue.

Mr. CRUMPACKER. It seems to me that a number of abuses could arise under such a provision.

In the first place, suppose the affected parties live in Main and California and if you insist upon consolidating their actions, one of them will have to travel across the country to pursue his claim or right. Another thing which could occur is that an agency through experience may learn which courts tend to uphold their viewpoint and which do not uphold their viewpoint, and, on the basis of such experience may develop the practice of selecting the forum where they feel they have a better opportunity of winning their side of the case. Of course, lawyers learn from experience which courts are more apt to be favorable to their viewpoint and oftentimes select a forum accordingly. Granting a Government agency such power over the citizenry is questionable public policy.

Third, it occurs to me that if this review were to be had separately in different courts, then dissatisfied litigants would have a better basis for appeal to the Supreme Court. If there is a conflicting determination of a question in separate circuits there would be a much better opportunity, perhaps, to get certiorari to the Supreme Court. Whereas, if you rule out that possibility by this type of procedure in which one circuit court only is going to have the final say in this thing, it seems to me, in most cases, you rule out much possibility of appeal beyond that court.

Judge MARIS. All I can say is that the viewpoint that you have expressed has certainly much to commend it and the Judicial Conference had a discussion, I should say, almost exactly like this. I was there myself, and some of the judges expressed that point of view, but may I state that, in the last analysis, this is rather a rare exception. As a matter of fact, I think that there is a representative of the SEC here who, perhaps, will be able to say how many there are. There are not a great many of those reviews in total number any more, but I think that these cases are really rather rare, but that some provision should be made for them when they do arise. We wrestled with this thing awhile, and we came up with the idea that, perhaps, this is the best way to handle what is a rare situation, by putting upon an agency a standard which it must follow in respect to venue.

Mr. CRUMPACKER. Why could not the court determine that on motion supported by representations of the parties?

Judge MARIS. Which court?

Mr. CRUMPACKER. Any court. Do you not suppose the court to which the SEC elected to send the transcript could hold a hearing as to whether they were, or they were not, the most convenient court to the parties, and permit the parties to come in and present their side of that issue?

Judge MARIS. We set up a standard, and if it appears that standard has been very seriously departed from, the courts would certainly have at least a say then as to whether the agency had abused its discretion.

Mr. BRICKFIELD. It seems, Judge, that under this language, it would be the agency which would have the right to determine juris-

diction. In other words, you would have the agency, in fact, conferring jurisdiction upon a particular court of appeals, would you not?

Judge MARIS. It is not quite that, Mr. Brickfield. That is really the present situation because the present statute provides that jurisdiction to hear and decide does not attach until the record has been filed, so that the agency is in a position to give jurisdiction to one court or another at the present time, but under this provision, as you will see later, we are proposing to amend the statutes, so that jurisdiction vests upon the filing of a petition. That means that all the courts would have jurisdiction, but there must be some method of determining which one will actually exercise it.

Mr. BRICKFIELD. I think the standard or guide used, would be one of the greatest convenience for all of the parties, which would take away the present discretionary function of the agency.

Judge MARIS. Yes, that is right.

Mr. BRICKFIELD. Of course, it would be a question of Congressional policy as to whether that should remain in the court, because, after all, the agency is a party to the action in most cases, and in most cases partisan.

Judge MARIS. If you thought wise, you could undoubtedly substitute for this provision a provision providing that any one of the courts in which a petition is filed may, upon application, determine whether it is the appropriate forum and make an order to that effect. That could be done. The Conference just did not go that far in developing it.

Mr. BRICKFIELD. Is there a rule today that permits a party to one of these actions to move in any particular court to consolidate the appeals?

Judge MARIS. Yes, it was developed, as a matter of fact, between our court in the third circuit, and the second circuit, in a series of cases. The SEC filed a transcript in one or the other of the circuits, let us say in the second circuit, and the parties came in and asked us to transfer the petition which they filed with us to the second circuit where the record was. We held that we had inherent power and in the interest of justice, decided to do that. It was a little problematical, but we did it.

That was in the case of *Columbia Oil and Gasoline Corporation v. Securities and Exchange Commission* (3 Cir. (1943), 134 F. 2d 265); also in the case of *L. J. Marquis & Co. v. Securities & Exchange Commission* (134 F. 2d 335); also in the case of *L. J. Marquis & Co. v. Securities and Exchange Commission* (134 F. 2d 822).

Now, the development of this matter will be disclosed in the opinions in those cases. It was just a problem which came to us. There was no statutory provision then covering that, but something had to be done at that time.

Mr. CRUMPACKER. It has been a rather fundamental part of our jurisprudence that any litigant should have the opportunity to pursue his rights at a point convenient to his place of residence. This will arbitrarily decree that where a question may be brought up in several different jurisdictions, all of the litigants, except those from one of those jurisdictions will have to go to the remaining one to have their cases heard. Of course, our transportation is considerably better now than it used to be, so that it is not as much of an inconvenience as it once was to travel across the country, but I am just wondering about the advisability of establishing such a rule.



Judge MARIS. We have it in a good many cases at the present time; in antitrust cases, and interpleader cases, and in Federal Communications Commission cases. The latter are practically all centered here in the District of Columbia, which means that the litigants must come to the District of Columbia.

In the case of the SEC, they do not come here to Washington. They bring their suits where they live, so the District of Columbia will not be one of the forums to which they come. They will be the other courts of appeals which handle the review of these matters.

Mr. CRUMPACKER. There are many cases where you have to come to Washington, to pursue litigation connected with particular types of subject matters, and the Capital is a little more centrally located than some of these circuit courts.

Judge MARIS. Yes, that is right.

Mr. TAYLOR. Are all the FCC decisions reviewed in the circuit court here in the District of Columbia?

Judge MARIS. There is an option, I believe, in certain cases. I think the venue is exclusively here in some types of cases, and in other types of cases, there is an option of the circuit of residence of the petitioner or the District of Columbia, but they almost always bring them here. I think a bar has developed here which is familiar with that type of litigation, and that litigation is unquestionably centered in the District of Columbia today.

I do not think that we have ever had a case from the Federal Communications Commission in the third circuit.

That is one of the problems that this bill seeks to deal with. Now, whether we deal with it in the best way or not is a matter of judgment. We realize that, but we are working to make some improvements in the law.

Turning then to subsection (b) of proposed section 2112, that subsection provides for the abbreviation of the record by inclusion only of such material as the rules of court may require, or as the parties, including parties permitted to intervene by the court may stipulate, or as the court may designate by order. The stipulation or order may provide in an appropriate case, such as a petition for a consent decree enforcing a National Labor Relations Board order, that no record at all be filed.

May I stop just here to say that there is a case where a great deal of wasted time and effort can be avoided. One of the reasons why it is important that the various statutes be amended is so as to eliminate these current requirements that the entire record be sent in, in order to constitute a basis for jurisdiction. We have many hundreds of cases in which the Labor Board petitions the court of appeals to enter a decree. The parties agree that a decree should be entered, but they must, nevertheless, send us the full record. There is absolutely no purpose to be served by that. It is already an agreed matter. This would permit no record at all, just entering the petition.

Mr. CRUMPACKER. This is more or less the heart of the bill, is it not?

Judge MARIS. Yes, I think that is correct.

These provisions will enable the parties to abbreviate the record by eliminating all material not relevant to the question actually raised on review, with consequent savings of time and expense. Provision is made that additional portions of the record may be ordered by the



court if found to be needed. Moreover, if the correctness of a finding of fact is in issue all the evidence is to be included in the record except such as the parties by stipulation agree to omit as wholly immaterial to the questioned finding. This will enable the court to perform its duty under section 10 (e) of the Administrative Procedure Act to "review the whole record or such portions thereof as may be cited by any party."

In other words, you have put standards upon the courts as to the review of questions of fact so that we must consider the whole record, and we do not want the statute to impinge on the submission to the court of all the relevant evidence, if that is involved in the review of the case, but, of course, that part of the evidence which everybody agrees has no bearing, we can safely omit.

Certain of the agencies represented to our committee that in some cases it would be much more costly of time and money and seriously delay the proceedings to attempt to abbreviate the record than to send it all to the court of appeals and they accordingly opposed any compulsory provision for abbreviation by rule or order without their consent. We believed that there was merit in this point and subsection (b) accordingly includes a proviso giving the agencies the right, at their option, to file the entire record, restricted, however, to those courts only which, in view of their use of the appendix or modified printed record system, do not require the entire record to be printed.

In other words if, under the rules of the court of appeals the whole record sent up does not have to be printed, but only material excerpts from it, then it may be that it will be cheaper for the agency to bundle up the whole business and send it in than to have people go through it, picking out the excerpts. We realize that under this statute, that becomes a consideration for the agency as to which is less expensive and as to which procedure they may follow.

Subsection (c) authorizes the transmittal of the original papers, instead of certified copies, as the record in review and enforcement proceedings. As originally drawn this was to be compulsory if the rules or orders of the court so provided and optional with the agencies in the absence of such rules or orders. A number of the agencies pointed out to our committee that their records were public records which were required to be kept in their offices open to public inspection; also that in many cases an agency must retain the original papers in a proceeding before it for use in connection with another related case not on review. The agencies strongly urged that the compulsory feature of the original papers provision be eliminated. Our committee acquiesced and eliminated this feature from the bill which now authorizes the transmittal of the original papers as the record solely at the option of the agency. The bill provides, however, that this may apply to a part of the record also, so that the agency may transmit some original papers and certified copies of others.

It is entirely up to them.

The bill requires the return of any original papers at the conclusion of the case and this has now been broadened to permit the return also of certified copies which were included in the record. Certain agencies informed your committee that they would make use of such copies if returned and their return will relieve a serious storage problem in the offices of the clerks of the courts of appeals.

As I have stated, an examination of the statutes providing for the enforcement or review of particular agency orders indicated that most of them would require amendment to bring them into harmony with the provisions of proposed section 2112. Many of the statutes require the entire record before the agency to be filed. Some of them also provide that the court gets jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired until the filing of the transcript of the record.

We believe that the latter provision is illogical and unwise, illogical since it places it within the power of the agency to delay the acquisition of full jurisdiction by the court and unwise since it raises a serious question as to the extent of the court's power to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time the record is actually filed.

The bill, accordingly, follows the pattern of the latest congressional enactment on the subject, the act of December 29, 1950, the so-called Hobbs Act, relating to the review of orders of the Federal Communications Commission and certain other agencies, by proposing to amend the various statutes to provide in all cases that the reviewing court shall acquire jurisdiction upon the filing of the petition for review.

In the cases of the Federal Trade Commission Act, the Clayton Act, the Packers and Stockyards Act, the National Labor Relations Act, the Federal Power Act, and the Natural Gas Act, the existing law provides that the agency may modify or set aside its order after a petition for review has been filed, and up to the time of the filing of the record. In other words, the agency has a period in there in which it can further act or, perhaps, reconsider. The Judicial Conference agrees with the agencies that this power should be retained. The bill, therefore, proposes to amend these statutes so that, although jurisdiction shall be acquired by the court upon the filing of a petition for review, the jurisdiction shall not become exclusive until the filing of the record.

Certain perfecting amendments of the various statutes have been included in the bill. Thus it is provided that the clerk of the court shall transmit a copy of a petition for review to the agency concerned. This removes a present ambiguity on this point. Also "record" is substituted for "transcript" and in each case the record is required to be filed "as provided in section 2112 of title 28, United States Code.", thus bringing into play all the provisions of that proposed section and rendering it unnecessary to repeat in each statute providing for judicial review the detailed provisions relating to the record which now appear in some of them. Since many of these existing provisions are inconsistent with the plan of section 2112, they are proposed to be eliminated by the amendatory section of the bill.

That is a statement of the purpose and effect of the bill and I submit a draft of the bill prepared as required by the Ramseyer rule. We show in the case of each amendatory section exactly what is being dropped out, and what now is being added. That makes it much more understandable for you in examining those sections.

(The bill above referred to is as follows:)



A BILL To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders."

SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

"§ 2112. Record on review and enforcement of agency orders.

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify or otherwise review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. The record in such proceedings shall be certified and filed in the court of appeals by the agency, board, commission or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence and proceedings before the agency, board, commission or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission or officer is in question all of the evidence before the agency, board, commission or officer shall be included in the record except such as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission or officer concerned



if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review proceedings.

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] as provided in section 2112 of title 28, United States Code.* Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

"(d) [The] *Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive*" (15 U. S. C., sec. 45, Federal Trade Commission).

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: "Until [a transcript of] the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), are amended to read as follows:

"If such person fails or neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall [certify and] file [with its application a transcript of] the [entire] record in the proceeding, [including all the testimony taken and the report and order of the Commission or Board] *as provided in section 2112 of title 28, United States Code.* Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board [forthwith] shall [certify and] file in the court [a transcript of] the record in the proceeding, as [hereinbefore] provided in section 2112 of title 28, United States Code.* Upon the filing of [the transcript] *such petition* the court shall have the same jurisdiction to affirm, set aside, or modify the order of the the Commission or Board as in the case of an application by the Commission or

(NOTE.—The new statutory provisions inserted by the amendments are *italicized* and the present statutory provisions stricken out by the amendments are enclosed in [brackets].)

Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, *determined as provided in section 10 (e) of the Administrative Procedure Act*, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows:

"[The] *Upon the filing of the record with it* the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive" (15 U. S. C., sec. 21, Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System).

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Post Office Department and thereupon the said department* [forthwith] shall [certify and] file in the court [a transcript of] the record, [and testimony], *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* the court shall have jurisdiction to affirm, set aside, or modify the order of the department" (39 U. S. C., sec. 576, Postmaster General (District of Columbia Circuit only)).

SEC. 6 (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 193, Secretary of Agriculture).

(b) Subsections (b) and (c) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code*. If before such [transcript] *record* is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such [transcript] *petition* is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal" (7 U. S. C., sec. 194, Secretary of Agriculture).

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section [240 of the Judicial Code] *1254 of title 28*, if such writ is duly applied for within sixty days after entry of the decree" (7 U. S. C., sec. 194, Secretary of Agriculture).

SEC. 7. (a) The third sentence of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings [including the notice to the board of trade, a copy of the charges, the evidence, and the report and order], *as provided in section 2112 of title 28, United States Code*" (7 U. S. C., sec. 8, Contract Market Commission).

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended, are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture* [by delivering such copy to him] and thereupon the Secretary of Agriculture shall [forthwith certify and] file in the court [a transcript of] the record theretofore made, [including evidence received] *as provided in section 2112 of title 28, United States Code*. Upon



the filing of the [transcript] petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive" (7 U. S. C., sec. 9, Secretary of Agriculture).

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of the Treasury, or [upon] any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (19 U. S. C., sec. 1641, Secretary of the Treasury).

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80) is amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code*" (15 U. S. C., sec. 77i, Securities and Exchange Commission).

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part" (15 U. S. C., sec. 78y, Securities and Exchange Commission).

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall [forthwith prepare, certify, and] *thereupon file in the court [a full and accurate transcript of] the record in the proceedings held before it under this section, [the charges, the evidence, and the order revoking the grant] as provided in section 2112 of title 28, United States Code*" (19 U. S. C., sec. 81r, Foreign Trade Zone Board).

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719), is amended to read as follows: "Within thirty days after the filing of an appeal, the Commission shall file with the court [a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order] *the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code*" (47 U. S. C., sec. 402, Federal Communications Commission (District of Columbia Circuit only)).

SEC. 13. (a) Section (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), is amended to read as follows:

"(d) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), are amended to read as follows:

"(e) The Board shall have power to petition any court of appeals of the United States [(including the United States Court of Appeals for the District of Columbia)], or if all the courts of appeals to which application may be made are in vacation, any district court of the United States [(including the District Court of the United States for the District of Columbia)], within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall [certify and] file in the court [a transcript of] the [entire] record in the proceedings, [including



the pleadings and testimony upon which such order was entered and the findings and order of the Board] *as provided in section 2112 of title 28, United States Code.* Upon [such] the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just, and proper, and to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the [transcript] record. \* \* \* [The] Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in [sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347)] *section 1254 of title 28.*"

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Board*, and thereupon the aggrieved party shall file in the court [a transcript of] the [entire] record in the proceeding, certified by the Board [including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board] *as provided in section 2112 of title 28, United States Code.* Upon [such] the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same [exclusive] jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive" (29 U. S. C., sec. 160, National Labor Relations Board).

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended, are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (27 U. S. C., sec. 204, Secretary of the Treasury).

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 79x, Securities and Exchange Commission).

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended (49 Stat. 860), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860), are amended to read as follows: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall*

[certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as *provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to affirm, modify, or set aside such order in whole or in part" (16 U. S. C., sec. 825l, Federal Power Commission).

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to any member of the Board, or [upon] any officer thereof designated by the Board for that purpose, and thereupon the Board shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as *provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order" (46 U. S. C., sec. 1181 (b), Federal Maritime Board (District of Columbia Circuit only)).

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024), is amended to read as follows:

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon [certify and] file in the court [a transcript of] the record, if any, upon which the order complained of was entered, as *provided in section 2112 of title 28, United States Code*" (49 U. S. C., sec. 646, Civil Aeronautics Board).

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.*"

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court* to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as *provided in section 2112 of title 28, United States Code*. Upon the filing of such petition [transcript] such court shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to affirm, modify, or set aside such order in whole or in part" (15 U. S. C., sec. 717r, Federal Power Commission).

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] *the record* of the proceedings [and the record] on which he based his order, as *provided in section 2112 of title 28, United States Code*. Upon [such] *the filing of such petition*, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Secretary of Agriculture, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] *the record* of the proceedings [and the record] on which he based his order, as *provided in section 2112 of title 28, United States Code*. Upon [such] *the filing of such petition*, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part" (21 U. S. C., sec. 346a, Secretary of Health, Education and Welfare, Secretary of Agriculture).

SEC. 21. The third sentence of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "The Secretary [promptly upon service of the summons and petition,] *thereupon* shall [certify and] file in the court the [trans-



script] record of the proceedings [and the record] on which the Secretary based his order, as provided in section 2112 of title 28, United States Code" (21 U. S. C., sec. 371, Secretary of Health, Education and Welfare).

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be [served upon] transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner" (29 U. S. C., sec. 210, Secretary of Labor).

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall [certify and] file with the court in which such petition has been filed [a transcript of] the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter [upon the pleadings and transcript of the record,] a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court [a transcript of] the additional record" (45 U. S. C., sec. 355, Railroad Retirement Board).

SEC. 24. (a) Subsection (e) of section 409 of the Federal Seed Act (53 Stat. 1287), is amended to read as follows:

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 1599, Secretary of Agriculture).

(b) The second and third paragraphs of section 410 of the Federal Seed Act Act (53 Stat. 1288), are amended to read as follows:

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] thereupon file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] as provided in section 2112 of title 28, United States Code. If before such [transcript] record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such [transcript] petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal" (7 U. S. C., sec. 1600, Secretary of Agriculture).

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall [certify and] file [with its application a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, the report, and the order] as provided in section 2112 of title 28, United States Code. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon the person against whom the order was issued" (7 U. S. C., sec. 1601, Secretary of Agriculture).



Sec. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to any member of the Commission or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such **[transcript]** *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80a-42, Securities and Exchange Commission).

Sec. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855), are amended to read as follows: "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such **[transcript]** *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80b-13, Securities and Exchange Commission).

Sec. 27. (a) The third sentence of paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows: "The Surgeon General shall **[forthwith certify and]** *thereupon* file in the court the **[transcript]** *record* of the proceedings **[and the record]** on which he based his action, *as provided in section 2112 of title 28, United States Code.*"

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall **[certify to]** *file in the court the [transcript and] record of the further proceedings*" (42 U. S. C., sec. 291j, Public Health Service).

Sec. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927), is amended to read as follows: "Within thirty days after the filing of said appeal the Secretary shall file with the court the **[originals or certified copies of all papers and evidence presented to him upon the hearing involved, a like copy of his decision thereon, a full statement in writing of the facts and grounds for his decisions as found and given by him]** *record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal*" (7 U. S. C., sec. 1115, Secretary of Agriculture (District of Columbia Circuit only)).

Sec. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to the Board, and thereupon the Board shall [certify and] file in the court [a transcript] of the [entire] record in the proceeding, [including all evidence taken and the report and order of the Board] as provided in section 2112 of title 28, United States Code.* **[Thereupon]** *Upon the filing of such petition* the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides" (50 U. S. C., sec. 793, Subversive Activities Control Board).

Sec. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until **[a transcript of]** the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it" (50 U. S. C., sec. 820, Detention Review Board).

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court [a duly certified transcript of] the [entire] record of the proceedings before the Board with respect to the matter concerning which judicial review is sought, [including all evidence upon which the order complained of was entered, the findings and order of the Board] as provided in section 2112 of title 28, United States Code. \* \* \* [Thereupon] Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board" (50 U. S. C., sec. 821, Detention Review Board).

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the [transcript] record" (50 U. S. C., sec. 821, Detention Review Board).

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

"SEC. 6. [Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless] Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, [duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing] as provided in section 2112 of title 28, United States Code" (5 U. S. C., sec. 1036, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131), is amended to read as follows: "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file [a certified transcript of] in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order" (5 U. S. C., sec. 1037, Federal Communications Commission, Secretary of agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

SEC. 32. The second and third sentences of subsection (b) of section 208 of the Federal Coal Mine Safety Act, as amended (66 Stat. 702), are amended to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall [promptly certify and] file in such court [a complete transcript of] the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such [transcript] record shall be paid by the party making [the] such appeal" (30 U. S. C., sec. 478, Federal Coal Mine Safety Board of Review).

SEC. 33. This act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

A BILL To provide for reasonable notice to the agency of applications to the courts of appeals for interlocutory relief against orders of the Civil Aeronautics Board, the Federal Communications Commission, the Secretary of Agriculture, the Federal Maritime Board and the Atomic Energy Commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of subsection (d) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024; 49 U. S. C., sec. 646), as amended, is further amended to read as follows: "Upon good cause shown and after reasonable notice to the Board, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriated: Provided, That no interlocutory relief may be granted except upon at least five days' notice to the Board].

SEC. 2. The third sentence of subsection (b) of section 9 of the Act of December 29, 1950 (64 Stat. 1132; 5 U. S. C., sec. 1039), is amended to read as follows: "In cases where irreparable damage would otherwise ensue to the petitioner, the



court of appeals may, on hearing, after [not less than five days'] *reasonable* notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than sixty days from the date of such order pending the hearing on the application for such interlocutory injunction, in which case such order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to petitioner and specifying the nature of such damage."

Judge MARIS. That is my statement. I shall be glad to answer any further questions that the members of the committee may have.

Mr. CRUMPACKER. I take it that you have determined that it would be impossible to accomplish these purposes through amendments to existing laws, through general amendments which have application to all cases, but that you have to take them up individually and specifically?

Judge MARIS. It seemed to us that that was by far the better way to do it. If you make a general statute and say, "This repeals all other statutes which are inconsistent herewith", you put a burden on those who prepare the revisions of the United States Code to determine what is actually repealed and what is not repealed. It is a difficult problem to handle. The clean-cut way to do it is for Congress to say exactly what it intends in each case.

That is what we have sought to do in order to carry out these general principles, that I have referred to, successfully.

No amendments are made that do anything other than to correct these statutes procedurally along the lines of the proposals which I have mentioned, and I would certainly think it would be very helpful to the petitioners and to the agencies if the specific provisions were inserted in this way so that there could be no doubt about the procedure to be followed.

Mr. BRICKFIELD. Judge Maris, the bill permits the several courts of appeals to adopt these rules with the approval of the Judicial Conference.

Judge MARIS. Yes.

Mr. BRICKFIELD. Is there any specific reason why the Judicial Conference was selected as the body to give approval? Why not have the Supreme Court approve the rules since, as I understand it, both the Criminal and the Civil Rules of Federal Procedure are promulgated by the Supreme Court. Why not have that court approve the rules?

Judge MARIS. No, the Judicial Conference is the chief administrative body. I should say, of the judicial branch of the Government. The reason we did that is because that is what was done in the case of the Hobbs Act.

For 6 years we have had exactly that provision with respect to rules relating to the review of those agencies which came within the provisions of the Hobbs Act, the Federal Communications Commission the Secretary of Agriculture, the Federal Maritime Board, the Atomic Energy Commission and 1 or 2 others. As a practical matter, it has worked out well.

It would not take away from the courts the authority to make rules suitable for their conditions, but by providing that those rules must be approved by the Judicial Conference, it gives a uniformity of approach which has worked out very well in the case of the Hobbs Act.

As a matter of fact, I may say that the way it has worked has been this, that a committee of the Judicial Conference, of which I happen to be a member, so that I know about this procedure, suggested uniform rules under the Hobbs Act, and made those rules broad enough to cover all agency reviews not merely Hobbs Act cases, and the Judicial Conference approved those rules in principle as suitable rules, and submitted them to the 11 circuit courts of appeals, and those courts, 1 by 1, have adopted them and, of course, the Conference has approved them, and the net result has been that we have achieved very substantial uniformity in this field which would not have been accomplished in any other way, while at the same time preserving the autonomy of the courts.

Mr. BRICKFIELD. What I was looking for was a precedent in some other federal statute wherein the Judicial Conference was the approving body.

Judge MARIS. Your precedent is the act of December 5, 1950, the so-called Hobbs Act, to which I have referred. That has been in force since 1950, and the Judicial Conference has been doing this very thing for the last 5 years.

Mr. BRICKFIELD. I can well imagine, when the courts of appeal promulgate rules, that they will have to give wide discretion to the agencies, as to what part of the record shall go forward, and I suppose there will be disagreements as to what part of the record shall go up on appeal. Is there any provision, after an agency makes its decision, whereby an appeal would lie as to this one particular question?

Judge MARIS. The agency is not given the authority to make the decision. I cited subsection (b) which provides that the record to be filed in the court of appeals shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, or such portions thereof as the rules of the court of appeals may require to be included therein.

Mr. BRICKFIELD. It takes it all away——

Judge MARIS. No, it does not take it all away. It goes on to provide "or such portions thereof" as the rules of the court of appeals may require to be included therein. There are these three possible restrictions. In other words, under clause 1 the court may say by rule that in a particular type of case, in this kind of a case, only certain things shall be required, or the parties under clause 2 may say that we agree in our case we only need these parts of the record, or the court itself for the individual case may tailor it under clause 3.

Mr. BRICKFIELD. It looks like the courts could set up the rules under which they would say that all of the record shall go forward, including the pleadings and the evidence and the proceedings at the agency level; all shall go forward. But then the language in the bill goes into the disjunctive and says, "or such portions thereof." In other words, the entire record does not have to go forward, only "such portions thereof as the said rules of the court of appeals may require to be included therein, or as the agency, board, commission, or officer concerned in its discretion determines shall be put in."

Judge MARIS. No, you do not find that in the bill; it is not there. You have to send the whole record up unless the case comes within one of these three situations. No. 1, if the rules of the court of appeals require a lesser number of items to be included therein, than is included



in the group mentioned at the beginning of the subsection, or 2, if the agency and the petitioner and the intervenors stipulate that a lesser number be sent up, or, 3 if the court upon motion of a party or after a prehearing conference on its own motion designates a lesser amount.

They are not inconsistent.

In other words, the rules of court may say that in every Labor Board case you do not have to send up all of the things mentioned at the beginning of subsection (b), but only certain things, but that does not confer the right on a party in a Labor Board case to say, "In this case, we will send up only these things, but the court may, under the third clause do the same thing and say in view of the evidence that there is here, we do not need this part, which ordinarily the rules would require. I think it would work out very well. It is in accord with the pattern of these uniform rules already put into force under the Hobbs Act and which I have just referred to. This statute is written along the lines of what the courts have been trying to do under the old statute as far as possible.

Mr. BRICKFIELD. In other words, this sets up guides and standards?

Judge MARIS. Yes, in a very flexible way. We are dealing here with all sorts of agencies and all sorts of orders, and all types of reviews, and you have to be very flexible.

Mr. CRUMPACKER. Thank you very much, Judge.

Judge MARIS. Thank you very much, Mr. Chairman and gentlemen of the committee.

Mr. CRUMPACKER. The next witness is Mr. James V. Constantine, Solicitor of the National Labor Relations Board.

#### **STATEMENT OF JAMES V. CONSTANTINE, SOLICITOR OF THE NATIONAL LABOR RELATIONS BOARD**

Mr. CONSTANTINE. Gentlemen, my name is James V. Constantine. I am Solicitor for the National Labor Relations Board, and I have a very brief statement to make expressing the views of the Board on this bill.

H. R. 6682 appears to correspond textually and in section numbering to S. 2223, now before the Senate Committee on the Judiciary, and is probably a companion bill to its Senate counterpart.

Mr. CRUMPACKER. Has the Senate taken any action on that bill yet?

Mr. CONSTANTINE. I am not aware of any action that they have taken yet. I suppose we will be notified; but since we have received no notice, I assume, perhaps erroneously, that the Senate has taken no action.

Judge MARIS. The Judiciary Committee of the Senate has it and is writing to agencies and I believe any other interested parties about it.

Mr. CONSTANTINE. Both bills cover precisely the same subject matter. Only sections 2 and 13 apply to proceedings before the National Labor Relations Board.

Section 2 which is general, applies to all agencies and necessarily comprehends the National Labor Relations Board. Section 13 applies only to the Board.

The National Labor Relations Board has been advised by the Bureau of the Budget that the Department of Justice has expressed

approval of both H. R. 6682 and S. 2223 which is before the Senate Committee on the Judiciary.

The National Labor Relations Board joins in that approval to the extent that it embraces sections 2 and 13, the only provisions affecting the Board. With respect to the remaining sections of said proposed enactments the Board takes no position, since they deal with other agencies and with subject matters over which the Board has no jurisdiction.

Mr. CRUMPACKER. Thank you very much, Mr. Constantine.

Mr. CONSTANTINE. Thank you, Mr. Chairman and gentlemen of the committee.

Mr. CRUMPACKER. The next witness is Mr. Richard A. Solomon, Assistant General Counsel, Federal Communications Commission.

#### **STATEMENT OF RICHARD A. SOLOMON, ASSISTANT GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION**

Mr. SOLOMON. Mr. Chairman, I have prepared comments of the Commission on this bill, which I might give to you. My name is Richard A. Solomon, Assistant General Counsel of the Federal Communications Commission, in charge of the Litigation Division of the General Counsel's Office.

There is a brief statement that the Commission authorized yesterday and I think I might read it into the record. I do have a few additional personal comments to make as a result of today's session.

Mr. CRUMPACKER. All right.

Mr. SOLOMON. S. 2223 and H. R. 6682 are identical bills which would amend title 28, United States Code, by adding a section (2112) prescribing the procedure for the filing of the record of agency proceedings with a court of appeals wherein a proceeding has been instituted to review or enforce an agency order.

The principal purpose of the bills is to authorize abbreviation of the record on review. This is accomplished by empowering the courts to adopt rules relating to the filing of the record, and by authorizing the filing of a record containing less than all of the proceedings before the agency, pursuant to court rules, stipulation by the parties and the agency or court order.

Section 12 of S. 2223 and H. R. 6682 makes the proposed section 2112 applicable to appeals from decisions of this Commission under section 402 (b) of the Communications Act of 1934, as amended.

The Commission favors adoption of S. 2223 and H. R. 6682. Section 2112, and the court rules that would presumably be adopted to implement it, would reduce the administrative burden upon the Commission in compiling records for filing in court, while leaving the Commission the option of filing the complete record. In some cases, it will be more convenient to file everything. It will no longer be necessary to file lengthy records containing all proceedings before the Commission, when a portion of the pleadings and evidence presented to the Commission are immaterial to the appeal. It may be noted that abbreviation of the record will also facilitate its use and handling by the Commission and the courts.

At the present time some petitions for review of action taken by this Commission are instituted pursuant to Public Law 901, 81st Congress, 2d session—that is, the Hobbs bill which Judge Maris re-



ferred to—which provides for abbreviation of the record by stipulation or order of the court. The instant amendment will establish identical procedures for filing of the record in appeals from all Commission orders.

That is the statement of the Commission.

Congressman Taylor asked about where our appeals in fact go to. We have a split appellate procedure. Radio licensing cases, in general, by law must go to the District Court of Appeals for the District of Columbia.

For other types of cases, such as rulemaking proceedings, proceedings involving telephone and telegraph regulation, there is a dual venue, and it is possible to bring those cases in the court of appeals here, or in the court in the area in which the appellant resides. But as Judge Maris stated, since there is a very specialized radio bar in Washington, the option to take appeals in the other courts of appeals is practically never exercised.

Mr. TAYLOR. Is that because of some rule?

Mr. SOLOMON. No, sir; I think it is primarily because of the convenience of counsel.

Now, we did have one case where, from the same order of the Commission, a rulemaking order, appeals were brought in three circuit courts, the third circuit, in the ninth circuit, and in the District of Columbia. The problem of who was actually going to take hold of the cases and decide them never really came to a head because the cases in the other 2 circuits were eventually dropped, but we did have the problem here of providing records for 3 courts, and in that case we did provide some sort of record in all 3 courts at great expense and with a great waste of time.

We are very much in favor of this bill because, as the Congressmen well know, in these television and other radio application cases, we may have 3 or 4 applicants, and if there are 3 or 4 applicants, only 1 of the losers may appeal. That means that the record before the Commission may contain thousands of pages which relate solely to an applicant who loses before the Commission, who is not even appealing.

Mr. TAYLOR. So you eliminate whatever testimony was given by the applicant under this bill?

Mr. SOLOMON. Yes, we could.

Mr. TAYLOR. Assume that there are two contestants for a TV license in California, the decision of the Commission, of course, will determine which of the two contestants in California will receive this license. Now, an appeal is taken by the unsuccessful litigant. Where would his appeal be heard?

Mr. SOLOMON. In that particular case, his appeal would be heard under section 402 (b), and that, by statute, has to be brought in the District Circuit Court of Appeals.

Mr. TAYLOR. So that the District Circuit Court of Appeals here has complete jurisdiction over all appeals that pertain to the granting of a TV or a radio license?

Mr. SOLOMON. There is a slight complication there, but as a general statement, that is correct, in all adjudicatory proceedings on TV, yes. In the case of the rules affecting radio licenses, you have a dual jurisdiction, but as long as it is an adjudicatory problem, the

Court of Appeals for the District of Columbia has exclusive jurisdiction.

I cannot speak for the Commission on this but I would like to suggest for the committee's attention a possible additional revision of section 12 of the act, which relates to the Commission. I am reading from page 13 of the bill. I have not had time to discuss this with Judge Maris, but I certainly would yield to his views on the matter. The present proposal, as you will see, is to amend the present provision, to state that—

Within 30 days after the filing of an appeal, the Commission shall file with the court the record on which the order complained of was entered, as provided in section 2112 of this new bill.

This provision which says within 30 days after the filing of an appeal is not something the Judicial Conference suggested. That is taken directly from our existing law, but we have found occasionally that this 30-day period is a great burden on us, because the Commission will take an action which will result in 5 or 6 appeals, and with the small staff that we have, we have to get a record up within 30 days on 4 or 5 cases, and it means that people have to be diverted from more productive work to this routine work. Therefore, subject to criticism from Judge Maris and you gentlemen, I would like to suggest that you consider adding the following language after the words, "within 30 days after the filing of an appeal", "or within such additional time as the court may provide."

I think that would be consistent with the provisions of section (b) of this act, specifically implying that the courts will have power to specify the time for the filing of the record.

MR. CRUMPACKER. Would you care to comment on that, Judge?

Judge MARIS. Yes. My comment is simply this: I am sure that the Judicial Conference would have no objection to that amendment. The reason we did not go into that sort of thing was because it was beyond the scope of what we were proposing to do. We were religiously careful about that and did not consider a good many other changes which could have been made, except that this is directly concerned with the contents of the record, and that is in line with good practice, and we think it would be a proper thing to do.

MR. CRUMPACKER. Of course, it gives the Commission an unlimited time within which they may file the record.

MR. SOLOMON. No, it does not.

MR. CRUMPACKER. I assume that the evidence of record would not be difficult to get at.

Judge MARIS. These records are available under the present law.

MR. SOLOMON. Another reason for that suggestion is that sometimes we have dual appeals brought both under section 402 (a) the Hobbs Act, and also under section 402 (d) which is being amended. In appeals cases, sometimes the actions of the Commission combine within one decision matters of a rulemaking nature and matters which are adjudicatory in nature. We find ourselves in a strange situation where in the case of one of these appeals we have 30 days in which to file a record and in the other of the appeals the filing time given by the rules of the court in cases going to the court in the District of Columbia, is 40 days. There is no danger of our taking too much time because I would presume the court would specify, as it has in



those cases, 40 days. The additional period would have to be proportionate to the emergency.

Thank you; that is all, Mr. Chairman.

Mr. CRUMPACKER. Thank you very much, Mr. Solomon.

Our final witnesses will be Mr. Willard W. Gatchell, General Counsel of the Federal Power Commission, and Mr. Howard E. Wahrenbrock, Assistant General Counsel.

**STATEMENT OF WILLARD W. GATCHELL, GENERAL COUNSEL,  
FEDERAL POWER COMMISSION, ACCOMPANIED BY HOWARD E.  
WAHRENBROCK, ASSISTANT GENERAL COUNSEL, FEDERAL  
POWER COMMISSION**

Mr. GATCHELL. Mr. Chairman and gentlemen of the committee, my name is Willard W. Gatchell, General Counsel of the Federal Power Commission, and with me is Mr. Howard E. Wahrenbrock, Assistant General Counsel, as you have just stated.

I have given to the clerk copies of the Commission's report on this bill and will not take the time of the committee to read it. If I may just point out some of the important features of it, I will do so. The committee will find that the Commission's report is in substantial agreement with Judge Maris as to the very worthy purpose of this bill.

I think our differences are purely a matter of form.

We have some things which we thought should be brought to the attention of the committee.

The problem of a shortened record is one which has been confronting all of the regulatory agencies whose orders have been reviewed in the courts of appeals.

Many of the circuits in which the Commission has had cases have resolved the problem.

The 3d, 4th, 5th, 10th, and the District of Columbia circuits have resolved the problem of a short record by permitting us to send up merely a certified list of the documents making up the record, and that removes the necessity for sending any record at all.

These courts have adopted rules which, to us, are binding, and I believe that the Judicial Conference is merely asking for legislative authority to do what they are doing now and to present it in such a way that there can be no question about it.

We think that the courts now have the authority, and, therefore, are accomplishing what is sought here; namely, the elimination of the detail work involved in getting up a full record inasmuch as the record in practically no case is examined in complete detail.

Mr. CRUMPACKER. Do you make that comment with respect solely to the Federal Power Commission or generally?

Mr. GATCHELL. The rules apply, of course, to any review, provided the statute does not particularly cover it. We have limited our report to the Federal Power Act and Natural Gas Act cases and other cases coming from the Federal Power Commission.

Mr. CRUMPACKER. The reason I asked that question is that the power of the courts to accomplish this by rule may vary with respect to different statutes and agencies.

Mr. GATCHELL. Yes, I think that general statement is true, except as it may be varied by particular statutes.

One thing that we urge upon the committee is that you do not place the courts in a straitjacket, and I really wonder if this bill is as broad as we all hope it will be.

One of the difficulties that has faced the courts is whether the physical records shall be transmitted to the court. This bill does not solve that problem. It provides on page 2, lines 15 and 16, that the record in the proceedings shall be certified whereas, I do not believe that the court needs, or that there is any necessity, for filing, except in the most unusual cases, the record, certainly not the original record.

What is needed, whenever there is a dispute, is merely some printed copy, where enough copies are made available to the court. That has been accomplished in two ways.

We have found it to be a very successful practice to first have briefs printed by all of the parties; that is, the petitioner, the intervenors, and the Federal Power Commission, and then after the briefs are printed, to have the necessary parts of the record printed as a joint appendix. In that way, you eliminate all of the trivia that might encumber the joint appendix, and you give to the court a concise and precise printed record from which it can determine whether or not the order under review should be modified, confirmed, or set aside.

Another phase of this in which we have had some experience has been in connection with lines 19 and 20 on page 2, where it is dealing with petitions for review which are brought in two or more circuits.

We have had many instances where counsel for the companies have come in to me and asked whether they should file in another circuit when they are seeking to attack the order already under review by another petitioner. Invariably we have been able to work that out by some agreement with the counsel.

The only times where we have had actual filings in several circuits have been in connection with general orders. That happened in connection with orders prescribing procedures for the independent producers of natural gas who were held subject to Commission regulation in the Phillips decision of June 7, 1954. Several took us into the ninth and tenth circuits on direct review of those orders. Others attempted to take us into other courts, namely, the district court in the District of Columbia, and two district courts in Louisiana and Texas, where they sought an indirect review of those orders.

We were able to resolve those problems as to two or more appeals, but I think this bill, quite properly, presents to the committee a problem on how it will deal with it. You have to decide whether the court shall be the one to decide, and which court shall have jurisdiction where two or more circuits are involved, or whether you want to let the agency make that decision.

Mr. Wahrenbrock calls my attention to this very important phase of that point. This bill would permit the court to still review the agency's decision where the agency has not applied the criteria in a manner which petitioners argue is correct, and, therefore, it does permit a judicial review of that phase of it.

Furthermore, I might say this, that the two sections of the bill with which the Federal Power Commission is concerned are sections 16 and 19, in addition to the general provision which would be carried in this new section 2112, added in section 2 of the bill.



We will, of course, be glad to answer any questions which the committee may have.

Mr. CRUMPACKER. Are you suggesting any change in this language on page 2, lines 15 and 16?

Mr. GATCHELL. No, sir; we are not suggesting any change.

I think really that you should not put the courts in a straitjacket, but should give them complete freedom to prescribe what shall go up as the record. We think that a list of the documents is sufficient to give the court complete jurisdiction.

There is a slight inconsistency in it where it says that when a petition has been filed the agency shall have authority to modify or set its order aside, but also it says that until the record is filed the court has the same right, and thereafter the court has the exclusive right to modify or set the agency order aside.

Mr. CRUMPACKER. You are directing your comments to the meaning of the word "record"?

Mr. GATCHELL. Yes, sir.

Mr. CRUMPACKER. You do not want them to be tied too tightly?

Mr. GATCHELL. No, sir. We think that Judge Maris is absolutely right, that the court should have freedom in dealing with this. We think it has that, frankly, at the present time, but in any event, the committee should not prescribe changes by legislation to where it would not permit the flexibility which we have found to be working out under the rules of the court. Nobody has found any reason to complain of the detail we are dealing with here; namely, the submission of the record.

(The statement submitted by Mr. Gatchell is as follows:)

#### FEDERAL POWER COMMISSION REPORT ON H. R. 6682, 84TH CONGRESS

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes

Section 2 of this bill, which is drafted as an amendment to the United States Code (U. S. C.), would authorize the courts of appeals (with the approval of the Judicial Conference) to adopt rules with respect to the time and manner of filing, and the contents of, the record on review of orders of administrative agencies, including the Federal Power Commission; empower the agencies to select between two or more courts where petitions for review of the same order are filed in more than one; authorize abbreviation of the record by court rule, or stipulation of all parties, or by court order; permit transmittal of certified true copies in lieu of originals, and provide for the ultimate return of originals.

Sections 16 and 19 would respectively amend the review sections of the Federal Power Act and Natural Gas Act<sup>1</sup> to provide expressly that until the filing of the record in a court of appeals the Federal Power Commission can modify or set aside any order "in such manner as it shall deem proper."

Other sections of the act relating mostly to review provisions of statutes administered by other agencies will not be reported on herein.

In general this Commission is in sympathy with the apparent objectives of sections 2, 16, and 19 of the bill. However, it is not convinced of the necessity of those sections of the bill or any part thereof, and in any event, believes that they should not be enacted unless certain of their provisions are amended.

Our specific comments follow, in the order of the provisions to which they relate:

Page 2, lines 1-6: The bill should be redrafted as an amendment to an existing statute (or as a new statute), not as an amendment to the United States Code. The code is merely evidence of the statutes.

<sup>1</sup> These sections, unlike sec. 2 of the bill, are drafted as amend<sup>d</sup>

Page 2, lines 7-9: We question the desirability of making this part of the rule-making power of the several courts of appeals dependent upon approval of the Judicial Conference, which is an extrajudicial, advisory body.

Page 2, lines 9 and 15: The bill should not authorize court rulemaking on (1) "time \* \* \* of filing," (2) "manner of filing," and (3) "contents of," the Record, where existing statutory law covers 1 or 2 but not all 3 of those matters, for that would authorize court rules to supersede existing statutes which cover 1 or 2 but not all 3 topics.

Page 2, line 16: The bill should not require "the record" (which would mean the original and full record) to be certified because to do so would conflict with the provisions giving the courts power to prescribe rules on the same subject (p. 2, lines 7-15) and particularly where it may be desired that such rules provide for filing a certificate describing the record in lieu of filing the record itself (cf. CA3, rule 18 (7); similar rules have been adopted by the 2d, 4th, 5th, and 10th circuits); conflict with the provisions for abbreviation of the record (p. 3, line 7—p. 4, line 17); and conflict with the provision (p. 4, line 18—p. 5, line 9) permitting true copies of records to be filed in lieu of original records.

We believe that it is particularly desirable that any legislation of this kind contain a provision, like that on page 3, line 21—page 4, line 5, but going even further, that where any question of the sufficiency of the evidence to support the findings or order is raised, the party raising the question must bear the burden and expense of printing the record except insofar as opposed parties are willing and able, without burden to themselves, to agree to abbreviation of the portions to be printed. We also believe that it is desirable that such legislation permit "transcripts" or "copies", or certificates describing the record, to be filed in lieu of the original records.

More important than particular details such as we have discussed is the preservation of flexibility and we are not convinced that the entire matter cannot adequately be handled by court rules without new legislation. We believe that there should be opportunity for further experimentation, which is possible under the statutes as they now stand, and we doubt that further legislation is really necessary at this time.

With respect to sections 16 and 19 of the bill, we think they are unnecessary and that their omission (and omission of any corresponding provisions in other sections which may be no more necessary) would greatly simplify the bill. See also our comments above as to the desirability of legislating by reference to the statutes, not the United States Code. We also question whether the purported grant of power to this Commission to modify or set aside any finding or order "in such manner as it shall deem proper" is a valid delegation of legislative power, unless it is tied to the standards governing the Commission's power to issue such an order in the first instance.

FEDERAL POWER COMMISSION,  
BY JEROME K. KUYKENDALL, *Chairman*.

Judge MARIS. I would like to add a word with respect to that and what has been stated.

Mr. CRUMPACKER. Yes, sir, Judge.

Mr. GATCHELL. Judge Maris has a tabulation of the cases appealed from decisions of the Federal Regulatory Boards and Commissions. I hope the committee will make that a part of the record.

Mr. CRUMPACKER. Yes; it may be included in the record.

(The matter referred to is as follows:)



*Appeals commenced in the United States courts of appeals from decisions of Federal regulatory boards and commissions, fiscal years 1946 through 1955*

Federal regulatory Boards and Com- missions	Appeals commenced									
	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Total.....	151	184	137	258	246	328	353	387	388	304
Civil Aeronautics Authority.....		4	8	15	17	18	21	8	12	12
Federal Alcohol Administration.....	7	1	1			2	1	1	2	3
Federal Communications Commission.....	3	13	10	18	14	4	8	13	34	34
Federal Power Commission.....	5	9	12	15	12	12	24	21	15	27
Federal Security Agency.....		1	1			1	1	3		
Federal Trade Commission.....	4	8	9	6	8	38	20	25	11	25
National Labor Relations Board.....	107	124	63	172	167	236	244	285	294	178
Processing Tax Board of Review.....								1		
Secretary of Agriculture.....		2	4	1	1	2	1	3		5
Securities and Exchange Commission.....	11	8	13	6	6	3	10	4	5	6
Wages and Hours Administration.....				1			1		1	2
Board of Tax Appeals (District of Columbia).....	14	12	13	14	9	8	16	16	7	2
All other.....		2	3	10	12	4	6	7	7	10

Judge MARIS. Mr. Chairman, the Administrative Office of the United States Courts has prepared a tabulation which indicates the number of agency review and enforcement cases that have been brought in the courts of appeals from the various specified agencies during the past 5 years. That certainly shows you the picture and what is involved here, and it shows or discloses that the National Labor Relations Board has far more than half of all these cases.

Mr. CRUMPACKER. Yes.

Judge MARIS. May I just comment very briefly, too, about what has just been said about a new development in this field, and that is a procedure which our court and a number of other courts have adopted by rule, and I think it was initiated probably by suggestion from the Federal Power Commission, which is that in the case of unusually large records which they frequently have, that the agency be permitted to send us simply an index, list, or table of contents of the papers in the record, describing them, but keeping the actual papers in the agency subject to the orders of the court only, so that if the court, at any time wants to look at any of them, it may send for them. That is a very good provision. It was developed really after the initiation of this bill, and I think that the point which has just been made can be very well taken care of by a very small amendment on line 16, page 2, namely, to say that the record in such proceedings shall be certified and filed in or held for the court of appeals by the agency in accordance with its rules, and then the rules of the court will determine whether it shall be filed in or whether held for, and when items from the record shall be actually sent to the court will also be determined by the rules of the respective courts of appeals.

Mr. BROOKS. That sounds like an interesting suggestion, Judge.

I believe Mr. Crumpacker, and Mr. Taylor, if you have no further questions, that I would like, in behalf of the committee, to thank you for appearing here and to thank you, Judge Maris, for taking the time to come down here and to present your best views to us on this.

We are very grateful to you for doing that. We will do our best to get into it at an early date.

Judge MARIS. We are grateful to you for giving this matter this consideration. It is a technical matter but it is one of real importance to us in our everyday operations.

Mr. BROOKS. Thank you very much, gentlemen.

(Whereupon, at 12:15 p. m., the committee adjourned until 10:30 a. m., Friday, May 18, 1956.)



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## AGENCY REPORTS

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DEPARTMENT OF AGRICULTURE,  
Washington, D. C., May 29, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives,*

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 4, requesting the views of this Department with respect to H. R. 6682, 84th Congress, 1st session. We recommend the enactment of the bill provided that it is amended as herein suggested.

The main purpose of the bill is to authorize administrative agencies to abbreviate the administrative records to be reviewed in courts of appeals. We believe, on the basis of our experience, that generally it is more practicable to certify to the court the entire administrative record in a case. Unless a substantial portion of the administrative record can be omitted, e. g., a large block of pages in sequence from the transcript of the evidence, an attempt to abbreviate the record is wasteful of effort and productive only of relatively inconsequential results. Also in some cases the relevancy of substantial parts of the record cannot be known until the appellant's brief has been filed on appeal, setting forth the appellant's points or questions on which judicial review is sought. Haggling by the parties with respect to the material to be included in the record, on appeal, may result in the need for extensions of time, for filing the record, and resultant delays in the enforcement of the agency's order. In view of these circumstances, we believe that an agency and the interested parties should be permitted to stipulate with respect to an abbreviated record on appeal, but that the administrative agency should have the unqualified right to file the entire record in a proceeding if the agency deems that action to be appropriate.

Our views with respect to the provisions for an abbreviature of the record are consonant with the recommendations and report of the Conference on Administrative Procedure called by President Eisenhower on April 29, 1953. The conference recommended that legislation be adopted authorizing the filing of an abbreviated record by an agency "unless such agency in its sole discretion elects to file the entire record \* \* \*." Recommendation A-2. The conference further stated, at page 50 of its report, that "[a]lthough perhaps not strictly necessary, paragraph (a) of the recommendation, giving the agency the option of filing the entire record, is designed to make it clear beyond any doubt that no abbreviation will be required where the effort and expense involved in segregating those parts not necessary to be filed from the rest of the record is disproportionate to the benefits gained by a shortened record, or where, for any other reason, the agency considers it undesirable to abbreviate the record."

The bill provides that if the correctness of a finding of fact is in question, all of the evidence shall be included in the record unless the parties stipulate for the omission of certain evidence. However, we have had experience with a number of cases involving statutory construction where the issues had their rootage in extensive testimony, and in such cases, as well as those involving evidentiary issues, we believe that it is essential that the agency have the right to certify the entire record,

The bill further provides on page 4, lines 11-17 that "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." We recommend that the qualifying words, "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court," be deleted. The courts do not require the printing of the entire record and, therefore, we do not believe that the qualifying language serves any useful purpose. Also, inasmuch as the judiciary is in favor of reducing the size of administrative records, there would seem to be no basis for a rule requiring the printing of the entire record. The relevant or material parts of the record, as selected or designated by the parties, are printed on appeal,

but the rules are somewhat different with respect to the procedure to be followed in arriving at that result.

If the bill is amended to permit the agency without qualification, to file the entire administrative record, we recommend the enactment of section 2 of the bill providing for abbreviated records and, also, section 6 of the bill relating to the Packers and Stockyards Act, section 7 of the bill relating to the Commodity Exchange Act, section 20 (b) of the bill relating to the Federal Food, Drug, and Cosmetic Act, section 24 of the bill relating to the Federal Seed Act, section 28 of the bill relating to the Sugar Act of 1948, and section 31 of the bill relating to the act of December 29, 1950.

Our further recommendations relate to clarifying amendments.

We suggest that the word "uniform" be inserted just prior to the word "rules" on page 2, line 9, of the bill, and that the words "applicable in all courts of appeals" be inserted after the word "rules". The preamble of the bill states that its purpose is to make "uniform" the law relating to the record on review or enforcement of administrative orders, and therefore, we believe that the bill should make it plain that the rules are to be "uniform".

We recommend that a comma be inserted after the word "proceedings" on page 2, line 16, of the bill and that the following be inserted after the comma: "consisting of the contents prescribed by such rules,". The bill refers, in the immediately preceding sentence, to the "time," "manner of filing," and the "contents of the record." Hence it could be said that the failure to refer to the "contents of the record," on page 2, lines 16 to 19, is deliberate.

We recommend that a comma be inserted after the word "shall" on page 2, line 21, of the bill and that the following phrase be inserted: "irrespective of any other applicable statutory provisions,". In view of the first sentence in paragraph (a) on page 2, i. e., that the courts of appeals shall have the power to prescribe the time and manner of filing and the contents of the record where the "applicable statute does not specifically prescribe such time or manner of filing or contents of the record", we are not sure, under the present language of the bill, whether the provisions for transferring the proceedings to a single court where two or more actions are instituted in different courts of appeals would apply where the applicable statute contains some provisions in this respect. Our recommendation is designed to obviate that uncertainty.

We recommend that the word "or" on page 3, lines 9 and 15, be changed to "and". We believe that the material in paragraphs (1), (2), and (3) on page 3 of the bill would all be included in the record on appeal, and, therefore, paragraphs (1), (2), and (3) should not be in the disjunctive.

We recommend that the word "stipulation" on page 3, line 12, be changed to "designation". Otherwise, if the rules of the court do not "require" that certain material be included in the record, and if all of the parties do not stipulate with respect to the inclusion of certain material, it would require a motion in court to include the matter in the record, unless, of course, the material happened to be included within the category of material which could be designated irrespective of the provisions of paragraphs (1), (2), and (3) of section 2 (b) of the bill. If this change is adopted, then we recommend that the sentence beginning on page 3, line 18, be amended to provide that "Such an order, or a stipulation by the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding filed with the agency, board, commission or officer concerned or in the court in any such proceeding may provide in an appropriate case that no record need be filed in the court of appeals."

We recommend that the word "necessary" on page 4, line 8, of the bill be changed to "desirable" so that the court will not be unduly restricted in permitting additional portions of the record to be certified.

We recommend that "subsections (b) and (c)" on page 9, line 12, of the bill be changed to "subsections (b), (c) and (d)", and that the following paragraph be inserted after line 5 on page 10: "(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate, in paragraph (d) of section 204 of the Packers and Stockyards Act, the reference to the record being "duly certified \* \* \* as aforesaid" inasmuch as H. R. 6682 would eliminate the prior reference in the act to the certification of the record.

We recommend that the words "third sentence" on page 10, line 17, of the bill be changed to "third and fourth sentences", that the word "is" on page 10, line 19



be changed to "are", and that the following sentence be inserted following the sentence ending on page 10, line 25: "The testimony and evidence taken or submitted before the said commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case." The purpose of this recommendation is to eliminate the words "duly certified \* \* \* as aforesaid" from the fourth sentence of section 6 (a) of the Commodity Exchange Act, inasmuch as H. R. 6682 would eliminate the prior reference in the act to the certification of the record.

We recommend that the phrase "the weight of evidence, shall in like manner be conclusive" on page 11, lines 12 and 13, of the bill be changed to the terminology appearing on page 8, lines 8-10, i. e., "substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive." We believe that the original phrase "the weight of evidence" was intended by Congress to mean the "substantial weight of evidence" rather than the "greater weight of evidence." The United States Court of Appeals for the Seventh Circuit has applied the phrase "the weight of evidence" substantially the same as the familiar substantial evidence test. See *Great Western Food Distributors v. Brannan* (201 F. 2d 476, 479-480, certiorari denied, 345, U. S. 997). The court held that it "would seem, then, that the function of this court is something other than that of mechanically reweighing the evidence to ascertain in which direction it preponderates; it is rather to review the record with the purpose of determining whether the finder of the fact was justified, i. e., acted reasonably, in concluding that the evidence, including the demeanor of the witnesses, the reasonable inferences drawn therefrom, and other pertinent circumstances, supported his findings" (Ibid). Although we do not believe that this clarifying amendment is essential, we believe that inasmuch as this section is to be amended in other respects, it would be appropriate to enact this proposed amendment at the same time. Also, the phrase "the weight of the evidence" in the seventh sentence of section 6 (a) of the Commodity Exchange Act (42 Stat. 1001) should be amended in the same manner.

We recommend that the words "second and third" on page 22, line 14, of the bill be changed to "second, third and fourth", and that the following paragraph be inserted on page 23, following line 5, of the bill: "The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate the words "duly certified \* \* \* as aforesaid" from the fourth paragraph of section 410 of the Federal Seed Act, inasmuch as H. R. 6682 would eliminate the prior reference in the act to the certification of the record.

We believe that the enactment of the bill would not require any additional appropriation.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

DEPARTMENT OF COMMERCE,  
OFFICE OF THE GENERAL COUNSEL,  
*Washington.*

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in further reply to your letter of May 4, 1956, addressed to the Foreign-Trade Zones Board, in regard to H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders and for other purposes.

Section 11 of this bill is the only provision thereof which is of interest or concern to the Foreign-Trade Zones Board. It would amend in a minor respect the present provision in the Foreign-Trade Zones Act relating to judicial review and enforcement of the Board's orders.

The records of this Department and of the Foreign-Trade Zones Board disclose that there has not been any litigation experience which has tested the present provision in the Foreign-Trade Zones Act in regard to appeals from orders of the

Board. As far as we can determine, however, in consultation with other agencies having similar activities and problems, there would appear to be no objection to the proposed amendment contained in section 11 of H. R. 6682.

Sincerely yours,

HAROLD, B. CORWIN,  
*Deputy General Counsel.*

TREASURY DEPARTMENT,  
*Washington, May 17, 1956.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

It is understood that the bill would enact the substance of the separate but parallel recommendations made by the Committee on Revision of the Laws of the Judicial Conference of the United States and by the President's Conference on Administrative Procedure. The measure is designed to promote expedition and economy in litigation in the courts of appeals to review orders in administrative proceedings.

The provisions of the bill amending statutes administered by the Treasury Department present no problem. The Treasury Department, approving the purpose of the legislation, recommends its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Sincerely yours,

A. N. OVERBY,  
*Acting Secretary of the Treasury.*

UNITED STATES ATOMIC ENERGY COMMISSION,  
*Washington D. C., May 15, 1956.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary, House of Representatives.*

DEAR MR. CELLER: You have requested our comments on H. R. 6682, to authorize the abbreviation of the record on review or enforcement of orders of administrative agencies.

The bill would authorize the United States courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and contents of the record in proceedings for the review of agency orders. It would provide procedures for resolving conflicts of jurisdiction where proceedings respecting the same order are filed in more than one jurisdiction; would permit the filing of an abbreviated record by stipulation or court order; and would permit the filing of original papers with the reviewing court.

Proceedings for review of orders of this Commission are governed, pursuant to section 189 of the Atomic Energy Act of 1954, by the provisions of the Judicial Review Act of 1950 and section 10 of the Administrative Procedure Act. H. R. 6682 would make appropriate modifications and cross-references to the Judicial Review Act of 1950 so as to make the foregoing provisions applicable to orders of this agency, but would not modify or alter the Administrative Procedure Act.

We understand that the bill was drafted by a committee of the Judicial Conference of the United States and that that Conference recommends its enactment. The bill would appear to be in substantial accordance with Recommendation No. 2 of the President's Conference on Administrative Procedure. This agency is in accord with the objective of expediting and reducing the costs of proceedings for the judicial review of agency orders, and believes the enactment of H. R. 6682 would promote that objective.

The Bureau of the Budget advises that it has no objection to the transmittal of these views.

Sincerely yours,

K. E. FIELDS, *General Manager.*



BOARD OF GOVERNORS,  
FEDERAL RESERVE SYSTEM,  
Washington, May 24, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Reference is made to your letter of May 4, 1956, requesting a report on H. R. 6682, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

On May 14, 1956, the Board sent to the chairman of the Committee on the Judiciary of the Senate a report on the bill, S. 2223, which is identical with H. R. 6682. Two copies of the Board's report are enclosed,

Sincerely yours,

WM. MCC. MARTIN, JR.

MAY 14, 1956.

HON. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary,*  
*United States Senate, Washington, D. C.*

DEAR SENATOR EASTLAND: Reference is made to your letter of April 25, 1956, enclosing a copy of S. 2223, on which you request our report. The purposes of the bill are to abbreviate the record on review by the courts of orders of administrative agencies, and to make more uniform the various laws relating to judicial review of such orders.

The Board of Governors is in sympathy with the objectives of the bill. Its experience in such matters is limited, and it has not experienced any difficulty with the provisions now in effect. However, it would defer to the judgment of those agencies which have had more experience with these provisions.

Of course the Board has no comment with respect to the numerous provisions in the bill relating to orders of other agencies of the Government, except the general comment approving the objectives of the legislation.

Sincerely yours,

WM. MCC. MARTIN, JR.

FEDERAL COAL MINE SAFETY BOARD OF REVIEW,  
Washington, D. C., May 15, 1956.

HON. EMANUEL CELLER,  
*Chairman, House of Representatives Committee on the Judiciary,*  
*Washington, D. C.*

MY DEAR MR. CELLER: Reference your letter dated May 7, 1956, relating to Bill H. R. 6682, the Board has made a thorough study of this proposed legislation and has requested that I submit to you its views thereon.

The Board is, of course, fully sympathetic with any measures designed to reduce the costs and burdens of appellate review. However, the legislation here proposed appears subject to interpretation inconsistent with the statutory position and functions of this Board which, unlike the National Labor Relations Board and other similar agencies, is not a party to appellate review of its own orders.

To refresh your recollection, the Board is a wholly independent quasi-judicial agency created by title II of the Federal Coal Mine Safety Act (66 Stat. 692, et seq.). It is the sole duty of the Board to hear and determine applications filed with it by coal mine operators, seeking annulment or revision of, and temporary relief from, orders issued by an inspector or the Director of the United States Bureau of Mines, pursuant to the provisions of the Federal Coal Mine Safety Act. The parties to the proceedings before the Board are the coal mine operator who files the appeal, and the Director of the United States Bureau of Mines. Either the operator or the Director can appeal directly from a Board order to the United States court of appeals for the circuit in which the mine affected is located. As already mentioned, the Board itself is not a party to, nor does it participate in, the appellate proceedings.

Under section 32 of H. R. 6682, section 208 (b) of the Federal Coal Mine Safety Act would be amended to incorporate the record filing requirements set forth in



section 2112 of title 28, United States Code. Section 2112 (b) contains such provisions as:

"If, however the correctness of a finding of fact by the agency, board, commission or officer is in question all of the evidences before the agency, board, commission or officer shall be included in the record except such as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding \* \* \* If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation."

In the Board's opinion, it is not clear from such provisions of section 2112 whether the Board itself would be a party to any stipulation or any determination as to the extent of the record to be filed on an appeal from its decisions. If section 2112 is intended to imply in any manner that the Board, which is not a party to the appellate action, must nevertheless participate in determining the transcript portions to be filed on appeal it would be inconsistent with the Board's statutory position and functions outlined above. In effect, the Board would be converted from its present position which is analogous to that of United States district court judges, into an advocate participating, to some extent, in the review of its own decision by the appellate court. Such activities are clearly prohibited by and outside the purview of the Board's basic act.

The Board hopes that the foregoing views may prove of value to you.

The Bureau of the Budget has advised the Board that it would have no objection to the submission of this report.

Sincerely yours,

ROBERT J. FREEHLING,  
*General Counsel.*

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DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
December 1, 1955.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6682) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would authorize the several courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. It would also provide for abbreviation of such records pursuant to rules of court, stipulation of the parties, or court order. The bill would permit an agency which issued an order to file the original papers in lieu of a transcript and to regain possession of them upon completion of the proceedings in the court of appeals. It would also incorporate the foregoing provisions in a number of existing statutes dealing with review of administrative orders by courts of appeals.

The Department of Justice considers the proposal a laudable effort to eliminate unnecessary expenditures in time and money in the review of agency orders by the courts of appeals. Accordingly, it recommends enactment of the measure.

However, some concern has been expressed that the broad language of the proposed section 2112 (a) may possibly be construed to apply to certain proceedings not intended to be covered, for example, decisions of the Tax Court and administrative orders for the exclusion and deportation of aliens entered under the provisions of the Immigration and Nationality Act of 1952 (66 Stat. 1166, 8 U. S. C. A., sec. 1101 et seq.). As you know, Tax Court decisions are presently subject to review by the courts of appeals pursuant to section 7482

of the Internal Revenue Code of 1954, 26 U. S. C., sec. 7482; exclusion and deportation orders, to the extent that judicial review is permissible, are uniformly reviewable in the first instance in the district courts. The apprehension arises because of the broad language of section 2112 (a) that it shall apply to "all proceedings instituted in the courts of appeals to \* \* \* review \* \* \* orders of administrative agencies, boards, commissions and officers \* \* \*." In this connection it might be both desirable and appropriate to incorporate in the committee reports express language that the bill is not intended to apply to decisions of the Tax Court or to exclusion and deportation orders. Although there would appear to be little basis for believing that the bill in its present form could reasonably be construed to extend to such proceedings, it may nevertheless be wise to dispel any possible ambiguity in this regard.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,  
Deputy Attorney General.

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NATIONAL LABOR RELATIONS BOARD,  
Washington, D. C., May 14, 1956.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 4, 1956, inviting the Board's views with respect to H. R. 6682.

Comparison of H. R. 6682 and S. 2223 reveals that both proposed enactments are identical in substance and text. Hence we conclude that H. R. 6682 is a companion bill in the House to S. 2223. We have been informed by the Bureau of the Budget that the Department of Justice has transmitted to the Senate Committee on the Judiciary a statement indicating substantial approval with S. 2223 as a whole. We assume that such approval applies equally to the substantive provisions of H. R. 6682. In our opinion a perusal of S. 2223 and H. R. 6682 discloses that only sections 2 and 13 thereof relate to this agency. We concur with the Department of Justice's expression of approval to the extent that it applies to said sections 2 and 13; but we have no comment to make with respect to the remainder of said H. R. 6682, because that part thereof does not apply to the National Labor Relations Board.

The Bureau of the Budget has advised us that they have no objection to the submission of this letter.

Sincerely yours,

BOYD LEEDOM, Chairman.

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CIVIL AERONAUTICS BOARD,  
Washington, May 17, 1956.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 4, 1956, requesting our comment on H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The Board believes that the preparation and filing of the complete transcript of the record of the administrative proceeding often involves needless work and expense and sometimes serves to delay the review proceeding. Accordingly, the Board looks with favor upon any proposal which will serve to eliminate these burdens and delays. H. R. 6682 has been examined from the standpoint of its relation to review proceedings involving Civil Aeronautics Board orders, and in general we endorse the objectives and provisions of the bill.

However, we have one change to suggest. While the Board favors a procedure which permits the filing of an abbreviated record either by stipulation or by court order, we recommend that the bill be amended so as to permit an administrative agency when it believes it advisable to file a complete record. Since the burden and expense of preparing and filing the record customarily is placed



on the agency, it is believed that it should be left to agency option whether a complete record should be filed with the reviewing court, whether negotiations should be entered into looking toward a stipulated record, or whether an order should be sought from the court for leave to file less than the full record. Experience indicates that, in many of the Board's cases, greater time and effort may be required on the part of all concerned in attempting to determine the content of an abbreviated record than would be expended in the present procedure of certifying the entire transcript. Further, negotiation or other procedures looking toward an abbreviated record could be used for purposes of delay. The agency's own interest in eliminating needless work and expense will serve to insure that stipulations will be entered into whenever feasible, or application made to the reviewing court for leave to file less than the complete record in an appropriate case.

Accordingly, the Board recommends that the sentence beginning on line 11, page 4 of H. R. 6682 and ending on line 17, page 4, be stricken and the following substituted:

"The agency, board, commission or officer concerned shall have an option without regard to the foregoing provisions of this subsection, to file in the court in which a proceeding is pending the entire record of the proceedings before it without abbreviation."

Subject to the above recommendation for amendment, the Board endorses the enactment of H. R. 6682.

The Bureau of the Budget has advised that there would be no objection to the submission of this report.

Sincerely yours,

JOSEPH P. ADAMS, *Acting Chairman.*

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FEDERAL COMMUNICATIONS COMMISSION,  
Washington 25, D. C., May 7, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington 25, D. C.*

DEAR CONGRESSMAN CELLER: In response to your letter of May 9, 1956, enclosed herewith are the comments of this Commission on H. R. 6682.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

#### COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON S. 2223 AND H. R. 6682

S. 2223 and H. R. 6682 are identical bills which would amend title 28, United States Code, by adding a section (sec. 2112) prescribing the procedure for the filing of the record of agency proceedings with a court of appeals wherein a proceeding has been instituted to review or enforce an agency order. The principal purpose of the bills is to authorize abbreviation of the record on review. This is accomplished by empowering the courts to adopt rules relating to the filing of the record, and by authorizing the filing of a record containing less than all of the proceedings before the agency, pursuant to court rules, stipulations by the parties and the agency, or court order. Section 12 of S. 2223 and H. R. 6682 make the proposed section 2112 applicable to appeals from decisions of this Commission under section 402 (b) of the Communications Act of 1934, as amended.

The Commission favors adoption of S. 2223 and H. R. 6682. Section 2112, and the court rules that would presumably be adopted to implement it, would reduce the administrative burden upon the Commission in compiling records for filing in court, while leaving the Commission the option of filing the complete record. It will no longer be necessary to file lengthy records containing all proceedings before the Commission, when a portion of the pleadings and evidence presented to the Commission are immaterial to the appeal. It may be noted that abbreviation of the record will also facilitate its use and handling by the Commission and the courts.

At the present time some petitions for review of action taken by this Commission are instituted pursuant to Public Law 901, 81st Congress, 2d session, which provides for abbreviation of the record by stipulation or order of the court. The instant amendment will establish identical procedures for filing of the record in appeals from all Commission orders.

Adopted May 16, 1956.



FEDERAL POWER COMMISSION,  
Washington, May 17, 1956.

Re H. R. 6682, 84th Congress.

Hon. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,  
United States House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: With reference to your request for the views of the Federal Power Commission on H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes, there are attached four copies of our report.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

#### FEDERAL POWER COMMISSION REPORT ON H. R. 6682, 84TH CONGRESS

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

Section 2 of this bill, which is drafted as an amendment to the United States Code, would authorize the courts of appeals (with the approval of the Judicial Conference) to adopt rules with respect to the time and manner of filing, and the contents of, the record on review of orders of administrative agencies, including the Federal Power Commission; empower the agencies to select between two or more courts where petitions for review of the same order are filed in more than one; authorize abbreviation of the record by court rule, or stipulation of all parties, or by court order; permit transmittal of certified true copies in lieu of originals, and provide for the ultimate return of originals.

Sections 16 and 19 would respectively amend the review sections of the Federal Power Act and Natural Gas Act <sup>1</sup> to provide expressly that until the filing of the record in a court of appeals the Federal Power Commission can modify or set aside any order "in such manner as it shall deem proper."

Other sections of the act relating mostly to review provisions of statutes administered by other agencies will not be reported on herein.

In general, this Commission is in sympathy with the apparent objectives of sections 2, 16, and 19 of the bill. However, it is not convinced of the necessity of those sections of the bill or any part thereof, and in any event, believes that they should not be enacted unless certain of their provisions are amended.

Our specific comments follow, in the order of the provisions to which they relate:

Page 2, lines 1 to 6: The bill should be redrafted as an amendment to an existing statute (or as a new statute), not as an amendment to the United States Code. The code is merely evidence of the statutes.

Page 2, lines 7 to 9: We question the desirability of making this part of the rulemaking power of the several courts of appeals dependent upon approval of the Judicial Conference, which is an extrajudicial, advisory body.

Page 2, lines 9 and 15: The bill should not authorize court rulemaking on (1) "time \* \* \* of filing," (2) "manner of filing," and (3) "contents of" the record, where existing statutory law covers 1 or 2 but not all 3 of those matters, for that would authorize court rules to supersede existing statutes which cover 1 or 2 but not all 3 topics.

Page 2, line 16: The bill should not require "the record" (which would mean the original and full record) to be certified because to do so would conflict with the provisions giving the courts power to prescribe rules on the same subject (p. 2, lines 7 to 15) and particularly where it may be desired that such rules provide for filing a certificate describing the record in lieu of filing the record itself (cf. CA3 rule 18 (7); similar rules have been adopted by the 2d, 4th, 5th and 10th circuits); conflict with the provisions for abbreviation of the record (p. 3, line 7; p. 4, line 17); and conflict with the provision (p. 4, line 18; p. 5, line 9) permitting true copies of records to be filed in lieu of original records.

We believe that it is particularly desirable that any legislation of this kind contain a provision, like that on page 3, line 21; page 4, line 5, but going even

<sup>1</sup> These sections, unlike sec. 2 of the bill, are drafted as amendments to the statutes, not the United States Code.

further, that where any question of the sufficiency of the evidence to support the findings or order is raised, the party raising the question must bear the burden and expense of printing the record except insofar as opposed parties are willing and able, without burden to themselves, to agree to abbreviation of the portions to be printed. We also believe that it is desirable that such legislation permit transcripts or copies, or certificates describing the record, to be filed in lieu of the original records.

More important than particular details such as we have discussed is the preservation of flexibility, and we are not convinced that the entire matter cannot adequately be handled by court rules without new legislation. We believe that there should be opportunity for further experimentation, which is possible under the statutes as they now stand, and we doubt that further legislation is really necessary at this time.

With respect to sections 16 and 19 of the bill, we think they are unnecessary and that their omission (and omission of any corresponding provisions in other sections which may be no more necessary) would greatly simplify the bill. See also our comments above as to the desirability of legislating by reference to the statutes, not the United States Code. We also question whether the purported grant of power to this Commission to modify or set aside any finding or order "in such manner as it shall deem proper" is a valid delegation of legislative power, unless it is tied to the standards governing the Commission's power to issue such an order in the first instance.

FEDERAL POWER COMMISSION,  
By JEROME K. KUYKENDALL,  
*Chairman.*

SECURITIES AND EXCHANGE COMMISSION,  
*Washington, D. C., June 1, 1956.*

Re H. R. 6682, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals, etc.

Hon. EMANUEL CELLEP,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CELLER: This is in response to your letter of May 9, 1956, which we have acknowledged previously, in which you requested our comments on the above bill.

Our General Counsel has submitted to us a memorandum on this bill, and the companion S. 2223. Three copies of that memorandum are attached hereto. Upon full consideration of the matter, the Commission has approved and adopted the General Counsel's memorandum as a statement of its views. As indicated in the attached memorandum, we are in full accord with the general objectives of this bill. The proposals contained therein, however, do raise a few problems which are discussed in the memorandum.

We have been advised by the Bureau of the Budget, pursuant to its Circular No. A-19 that it has no objection to the views expressed herein.

We appreciate greatly the opportunity afforded us to comment on this proposed legislation.

Sincerely yours,

A. DOWNEY ORRICK, *Commissioner.*

MEMORANDUM OF THOMAS G. MEEKER, GENERAL COUNSEL, SECURITIES AND EXCHANGE COMMISSION

These are identical bills and will hereinafter be referred to as "the bill." The Commission is affected by sections 2, 9, 10, 15, 25, 26, and 33, and the comments contained herein are limited to those sections. No opinion is expressed with respect to the other provisions which do not affect the Commission.

I am in full accord with the general objectives of the bill. Certain provisions, however, present a number of problems which are discussed below.

#### I. EXCLUSIVE JURISDICTION OF THE COURT OF APPEALS ON FILING OF PETITION

Sections 10, 15, 25 and 26 of the bill would amend the court review provisions of the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, so as to provide inter alia that upon the filing of a petition for review



the court of appeals shall have exclusive jurisdiction to affirm, modify or set aside the Commission's order in whole or in part. The statutes presently provide that the court of appeals shall have exclusive jurisdiction upon the filing of the transcript of the record, which may not occur for some time after the filing of the petition.

The following problems are presented by this proposed change:

1. *Rehearing before the Commission.*—The suggested acceleration of the date of the exclusive jurisdiction of the court of appeals, in some instances, may possibly have the effect of depriving a party of the right to a rehearing before the Commission. Rule XII (e) of the Commission's Rules of Practice (17 CFR, sec. 201.12 (e)), permits the filing of a petition for rehearing within 5 days after entry of the order complained of. Under the proposed change if one of the parties to the proceeding should file a petition for review before another party files a petition for rehearing, the Commission may lack jurisdiction to entertain the petition for rehearing for the reason that exclusive jurisdiction to modify or set aside the Commission's order in whole or in part would be vested in the court of appeals. This would deprive the Commission of the power to modify its order in light of objections or changed circumstances called to its attention by a petition for rehearing or otherwise. Modification of an order, of course, may sometimes eliminate the basis for further litigation. Moreover, since proceedings before the Commission frequently involve more than one issue, the Commission may be deprived of power to modify its own order with respect to an issue which is not involved in the petition for review.

2. *Administrative stay.*—The proposed change might also possibly be construed to deny the Commission the power to grant a stay of its own order after a petition for review has been filed in the appellate court. Applications to the Commission for stays pending appellate court review are frequently made after the issuance of Commission orders. The Commission's familiarity with the case at this stage gives it a peculiar advantage in passing upon such applications. Where such applications are presented to an appellate court, the court generally has the benefit of the Commission's prior determination on the question of a stay. This may no longer be true if the proposed amendment is construed to deprive the Commission of jurisdiction in the matter once a petition for review has been filed.

3. *Multiple petitions.*—As previously indicated, proceedings before the Commission frequently involve more than one person. The Federal securities statutes commonly permit court review proceedings to be instituted in either the Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the allegedly aggrieved person resides or has his principal place of business. (See, *e. g.*, sec. 24 (a) of the Public Utility Holding Company Act of 1935, 15 U. S. C., sec. 79x (a).) The proposed change may create a problem of construction with regard to the respective jurisdictions of the various courts of appeals where several petitions for review of a single Commission order are filed by various parties in different courts. Section 2 of the bill would amend title 28 of the United States Code by adding section 2112 (a) which would authorize the Commission to file the record in that court where the proceedings could be carried on with the greatest convenience to all the parties, and would require the other courts to transfer the proceedings therein to the particular court in which the record was filed. The bill presumably contemplates that the filing of a petition for review in one court will not deprive a second court of jurisdiction to entertain a petition for review, notwithstanding the language of the bill which would give the first court "exclusive jurisdiction" on the filing of the petition. Presumably also, in transferring the proceedings to the court in which the record has been filed the first court would be relinquishing its "exclusive" or other jurisdiction in the matter. Such problems of construction do not arise under the present statutes since "exclusive" jurisdiction is not vested in a court of appeals until such time as the record is filed therein.

4. *Nonreviewable orders.* I assume that, notwithstanding the broad language respecting the exclusive jurisdiction of the court upon the filing of a petition for review, the Bill is not intended in any way to give the court of appeals jurisdiction to review certain types of orders which heretofore have not been regarded as reviewable by it, nor to foreclose the Commission from seeking to dismiss a petition for review for lack of jurisdiction. For example, certain Commission orders under section 11 (e) of the Public Utility Holding Company Act of 1935 (15 U. S. C. § 79k (e)), which are made conditional upon district court enforcement have been held not to be reviewable initially in a court of appeals. See *General Protective Committee v. SEC* (346 U. S. 521 (1954)). The court would also lack jurisdiction to review orders of an interlocutory nature. The question of what is a reviewable order, I presume, is not affected by the proposed legisla-

tion. A statement to this effect in the committee's report might eliminate possible future controversy on this point.

The particular benefits to be derived from the proposed acceleration of the time for vesting exclusive jurisdiction in the court of appeals are not clear. Courts of appeals presently have jurisdiction upon the filing of the petition with respect to various phases of the review proceedings, such as stays and matters pertaining to the record on appeal. As previously indicated, however, such jurisdiction is not to the exclusion of that jurisdiction which the Commission may continue to have until such time as the record is filed in the court of appeals.

## II. CONTENTS OF APPELLATE RECORD

Section 2 of the bill would add section 2112 (b) to title 28 of the United States Code to provide that the record to be filed in the court of appeals shall consist of "the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission or officer concerned \* \* \*." Provision would be made for the filing of only a portion of the full record in certain instances, and for dispensing with the entire record in an appropriate case.

It is not clear whether briefs filed in the administrative proceedings, which contain the written argument made to the Commission, would be part of the record on appeal. The Commission generally includes such briefs in records which it certifies, except in the Court of Appeals for the District of Columbia where they are excluded in deference to the opinion of that court in *Norris & Hirshberg v. SEC* (163 F. 2d 689, 694 (1947)). They are regarded as relevant because the court review provisions of the statutes administered by this Commission provide that no objection to the Commission's order shall be considered by the court unless such objection shall have been urged before the Commission. See, e. g., section 9 (a) of the Securities Act of 1933 (15 U. S. C. 77i (a)). While the question does not arise frequently, it may be necessary on occasion to refer to the briefs and oral argument before the Commission to show that a point was or was not urged, or was waived. In addition, rule XI (c) of the Commission's Rules of Practice (17 C. F. R. 201.11 (c)), provides: "Exceptions and proposed findings and conclusions not briefed in accordance with this rule may be regarded by the Commission as waived."

One solution to the problem might be to provide expressly that briefs and the transcript of the oral argument before the Commission shall be included in the record on appeal. Another solution, following the pattern of the proposed section 2112 (b), might be to provide that the briefs and said transcript shall be filed as a supplement to the record where the court desires to examine them in connection with its review of the Commission's order.

## III. TRANSMITTAL OF PHYSICAL RECORD TO COURT OF APPEALS

This bill, I assume, is not inconsistent with rules of court such as those adopted by the Courts of Appeals for the Second, Third, Fourth, Fifth, Tenth, and District of Columbia Circuits, which provide for the transmittal of a certified list of the documents and materials comprising the record in lieu of physical transmittal of the record itself. Under the typical rule the agency holds the material comprising the record "for and on behalf of the clerk of [the] court and subject to his orders", to be transmitted when and if required by the court for its use in the review proceedings. See, e. g., rule 13 (g) of the Court of Appeals for the Second Circuit.

These rules, in our experience to date, appear to work well and provide a method of dealing with voluminous records accumulated in extended administrative proceedings which may well be given further consideration in connection with this bill.

I presume that such court rules will be authorized under the proposed section 2112 (a) of title 28 of the United States Code which will empower the courts of appeals to adopt rules prescribing, inter alia, the "manner of filing" the record on appeal. Whether the record should be physically lodged with the court of appeals or held by the Commission for the use of the court, it seems, can properly be regarded as a matter involving the "manner of filing" the record within the purview of the proposed section 2112 (a). Should there be any substantial doubt about this, the bill should be revised to authorize the adoption of rules of this type.



IV. UNIFORMITY OF COURT REVIEW PROVISIONS OF THE FEDERAL SECURITIES STATUTES

The provisions of the various Federal securities statutes might be made uniform as respects the persons upon whom the petition for review may be served and the time when the court of appeals obtains "exclusive jurisdiction" of the case. The present bill proposes to change the jurisdictional provisions of all of the statutes except the Securities Act of 1933. Any changes in this regard which may ultimately be decided upon might be made applicable to the Securities Act as well. The bill, also, preserves the present differences in said statutes as to the persons upon whom the petition may be served. Thus, in the Securities Act of 1933 it is "the Commission"; in the Securities Exchange Act of 1934 it is "any member of the Commission"; and in the Public Utility Holding Company Act of 1935 it is "any member of the Commission, or \* \* \* any officer thereof designated by the Commission for that purpose."

V. APPROVAL OF JUDICIAL CONFERENCE OF UNITED STATES—UNIFORMITY OF COURT RULES

I assume that the official status of the Judicial Conference of the United States is such that it is proper to condition the power of the courts of appeals to adopt the contemplated rules upon the prior approval of that body, as provided in the proposed section 2112 (a) to title 28 of the United States Code. There is, at least, precedent for this arrangement in section 11 of the act of December 29, 1950 (64 Stat. 1132, 5 U. S. C. 1041), relating to the review of certain orders of designated administrative agencies and officers.

As in the case of the provisions of the statutes themselves, I believe that the rules of the various courts should also afford uniform procedures so far as practicable. While the bill itself does not provide for such uniformity, I assume that a principal purpose of the requirement of approval of the Judicial Conference is to encourage and facilitate the adoption of uniform rules in this area.

INTERSTATE COMMERCE COMMISSION,  
Washington, D. C., May 25, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR CHAIRMAN CELLER: Your letter of May 4, 1956, requesting an expression of views on a bill, H. R. 6682, introduced by you, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the court of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, has been referred to our Committee on Legislation. After careful consideration by that Committee, I am authorized to submit the following comments in its behalf.

The purpose of H. R. 6682 is clearly stated in its title as quoted above. Except for an occasional case arising under section 11 of the Clayton Antitrust Act (15 U. S. C. 21), this bill would not affect the review of orders of the Interstate Commerce Commission. The majority of the orders of this Commission are issued under the Interstate Commerce Act, and, under the provisions of section 1336, title 28, of the United States Code, are reviewable by three-judge United States district courts instead of the United States courts of appeal as in the case of orders of many of the other administrative agencies.

It is noted that section 2 of the bill would provide, among other things, that where proceedings have been instituted in two or more courts of appeal with respect to the same order of the administrative agency, the agency concerned shall file the record in that one of such courts in which, in its judgment, the proceedings may be carried on with the greatest convenience to all of the parties involved. This section would further provide that the other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed by the agency concerned.

While we wholeheartedly favor having such multiple actions determined by a single court, we do not believe that it would be desirable, in such cases, for the defendant agency to have the privilege and duty of determining in which court actions against it shall be determined. It would seem preferable that some

arrangement be devised whereby such a determination shall be made by the judiciary.

Subject to the foregoing reservation, we believe that enactment of H. R. 6682 would be desirable.

Respectfully submitted.

ANTHONY ARPAIA,  
Chairman,  
J. M. JOHNSON,  
OWEN CLARKE,  
Committee on Legislation.

RAILROAD RETIREMENT BOARD,  
Chicago, Ill., May 17, 1956.

Hon. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR MR. CELLER: In accordance with your request of May 7, 1956, the Railroad Retirement Board submits the following report on the bill H. R. 6682, introduced in the 84th Congress by you.

Primarily, the bill would authorize (in section 2) the courts of appeal for the various circuits to adopt rules prescribing the time and manner of filing, and the contents of, the record in all proceedings for review or enforcement of orders of administrative agencies in connection with which "the applicable statute" does not specifically prescribe otherwise; and to require the various agencies to comply with such rules. The bill would authorize, further, the abbreviation of any such record in accordance with the rules adopted by the several courts of appeal, or as the agency concerned and the other parties to the review of enforcement proceeding may agree (but not inconsistent with the court's rules) or as the court may designate either upon its own motion or a party's. The bill would also authorize an agency to file as the record in any such proceeding the original papers forming all or part of the record, or to file certified copies. In addition the bill would amend various provisions of law relating to review or enforcement of orders or decisions of the individual agencies (including, in sec. 23 of the bill, the court review provisions contained in sec 5 (f) of the Railroad Unemployment Insurance Act which govern also court review under the other legislation administered by the Railroad Retirement Board, the Railroad Retirement Act) to provide uniformity with respect to the authority of the courts in connection with the filing of records in review or enforcement proceedings and in recording and entering decrees in respect of such proceedings. The bill would specifically provide in section 33, however, that the bill should not be construed to repeal or modify any provision of the Administrative Procedure Act.

The effect on this agency of the particular amendments to the review provisions of the Railroad Unemployment Insurance Act [and as a consequence to the review provisions of the Railroad Retirement Act (sec. 11 of the Railroad Retirement Act)] included in section 23 of the bill would be (1) to provide in explicit terms, by reference, for the abbreviation of records which would be authorized by section 2 of the bill, (2) to give the reviewing court exclusive jurisdiction in the review proceeding upon the filing of a petition for review rather than, as at present, upon the filing of the record with the court, and (3) to eliminate the words "upon the pleadings and transcript of the record" from the specific provisions authorizing the court to enter a decree "upon the pleadings and transcript of the record."

The Railroad Retirement Board has no objection to the enactment of the bill as proposed.

A report on the identical bill, S. 2223, introduced in the Senate by Mr. Kilgore, has been cleared with the Bureau of the Budget, which informs us that there is no objection to its submission.

Sincerely yours,

RAYMOND J. KELLY, Chairman.



FEDERAL TRADE COMMISSION,  
Washington, May 16, 1956.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 4, 1956, inviting an expression of the views of this Commission upon H. R. 6682, 84th Congress, 1st Session, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

This bill would add a new section to chapter 133 of title 28 of the United States Code and would amend the acts of various administrative agencies, thereby making uniform the law relating to the record on review or enforcement of orders of such agencies. The Commission generally is in accord with the purposes of the bill, but desires to call your attention to an inconsistency in the proposed amendments to the Federal Trade Commission Act and the Clayton Act, contained in sections 3 and 4 of the bill.

Section 3 (a) of the bill, amending the sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), would provide that "until the record in the proceeding has been filed in a court of appeals of the United States," the Commission may at any time modify or set aside its report or order to cease and desist. Section 3 (c) of the bill, amending subsection (d) of section 5, would provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions, in substance, are the same as the corresponding provisions of the present statute. They contemplate that the jurisdiction of the court will not attach until the record is filed. But section 3 (b) of the bill, amending the third sentence of subsection (c) of section 5, would provide that the jurisdiction of the court of appeals would attach "Upon such filing of the petition," without reference to the filing of the record. The comparable provision of the present statute provides that such jurisdiction shall attach "upon such filing of the petition and transcript \* \* \*." We think that to remove this inconsistency the third sentence of subsection (c) of section 5 of the Federal Trade Commission Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill:

"Upon such filing of the petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary to its judgment to prevent injury to the public or to competitors *pendente lite*."

We consider the present provisions of law, which afford the Commission an opportunity to consider and act upon petitions for reconsideration before court review, to be very desirable. They enable the Commission to correct inadvertent errors that occasionally occur, and are quite valuable in preventing unnecessary litigation through the opportunity for careful reconsideration in appropriate instances. We think it would be regrettable to have any inconsistency in, or uncertainty about, the continuance of these useful provisions of existing law.

For the same reasons, like observations are pertinent with reference to section 4 of the bill, amending section 11 of the Clayton Act, as amended (64 Stat. 1127). Section 4 (a) would amend the sixth sentence of the second paragraph of section 11 of the act so as to provide that "Until the record" is filed with a court of appeals the Commission may modify or set aside its report or order to cease and desist. Section 4 (d) would amend the fifth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions are substantially the same as the corresponding provisions of the present statute, and contemplate that the jurisdiction of the court will not attach until the record is filed. Section 4 (c) of the bill, however, would amend the third sentence of the fourth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals would attach "Upon the filing of such petition," without reference to the filing of the record.

In order to remove this apparent inconsistency, we think the third sentence of the fourth paragraph of section 11 of the Clayton Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill:

"Upon the filing of such petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

We have only one further comment, which relates to the last sentence of subsection (b) of proposed section 2112 of title 28 of the United States Code, contained in section 2 of the proposed bill. That sentence is in the following language:

"*If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court* the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." [Italic supplied.]

The Commission is anxious to preserve the option of filing a transcript of the entire record in the court of appeals. While we believe the above language may accomplish this purpose, we see no need for the portion underscored above and suggest that it be stricken.

By direction of the Commission.

JOHN W. GWYNNE, *Chairman.*

N. B.—Pursuant to regulations, this report was cleared orally with the Bureau of the Budget on May 15, 1956, and the Commission was advised that there would be no objection to the submission of the report to the committee.

ROBERT M. PARRISH, *Secretary.*

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SUBVERSIVE ACTIVITIES CONTROL BOARD,  
OFFICE OF THE CHAIRMAN,  
Washington, D. C., June 7, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN CELLER: This will refer to your letter of May 7, 1956, requesting comments on H. R. 6682 now pending before your committee.

Mr. Gallagher, the Board's General Counsel, has been in touch with the counsel for your committee and has advised him that the Board is heavily engaged in litigation as a result of the recent remand by the Supreme Court in the case of *Communist Party USA v. Subversive Activities Control Board*. A number of Board orders finding organizations to be Communist fronts are now on appeal in the United States Court of Appeals. All of these organizations, including the Communist Party, have filed motions in the court of appeals as well as with this Board raising questions which affect virtually the entire administration of the Internal Security Act by the Board. With our small legal staff, we will be busily engaged for several months in litigation and in complying with the Supreme Court's remand.

In view of these considerations, it is respectfully requested that the Board be excused and excepted from a report on this bill, since to prepare one would require extensive study which would impede to some degree the Board's consideration of urgent problems vitally affecting the administration of the Internal Security Act.

With best personal regards, I am  
Sincerely yours,

THOMAS J. HERBERT, *Chairman.*



UNITED STATES DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, June 21, 1956.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington 25, D. C.

DEAR CONGRESSMAN CELLER: This is with further reference to your request for my comments on H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The bill would authorize United States courts of appeals to adopt rules, to be approved by the Judicial Conference of the United States, on the time and manner of filing and the contents of the record in all proceedings to review orders of administrative agencies in which the applicable statute does not specifically deal with those matters. Abbreviation of the record may be permitted by rule or order of the court or stipulation between the agency and the other litigants. Under the bill original papers could be filed in lieu of a transcript and provision is made for the agency to regain possession of these papers after completion of the proceedings in the courts of appeals. The bill also amends various statutes containing specific provisions for judicial review so as to bring their judicial review provisions into conformity with this bill.

As these provisions apply to review in circuit courts of appeals, the only administrative proceedings in the Department of Labor whose review would be affected by the bill's provisions are those conducted in connection with the determination of minimum wages in Puerto Rico and the Virgin Islands under the Fair Labor Standards Act of 1938, as amended. Specific provision is made in section 22 of the bill to conform the review of these proceedings under section 10 (a) of the act with the provisions of this bill.

The present lack of uniform requirements with respect to the filing of records in proceedings before the courts of appeals to review or enforce the orders of administrative agencies places burdens upon the agencies. This bill would provide a sensible and workable means of meeting this problem. As the same difficulties arise in connection with review or enforcement of administrative orders in district courts, however, I think consideration might well be given to extending similar provisions to those proceedings.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES P. MITCHELL,  
Secretary of Labor.

FEDERAL MARITIME BOARD,  
Washington 25, D. C., June 29, 1956.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 4, 1956, for the views of the Federal Maritime Board with respect to H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The bill would amend chapter 133 of title 28 of the United States Code by adding a new section 2112, which would govern the time and manner of filing, and the contents of, the record to be filed in United States courts of appeals, and the venue of such courts, in proceedings instituted in such courts to review or enforce orders of United States agencies, boards, commissions, and officers. The bill would also amend statutes conferring jurisdiction on such courts to review and enforce such orders to make the time of filing the petition to review or enforce the order the uniform time for the attaching of jurisdiction. Under some such statutes, jurisdiction does not now attach until the record is filed.

The new section 2112 (which the bill would add to title 28 of the United States Code) would provide that the record to be filed in courts of appeals in proceedings

to review or enforce orders of United States agencies, boards, commissions, or officers shall consist of—

(a) The contents prescribed by the statute conferring jurisdiction on courts of appeals to review or enforce the order if such statute prescribes such contents; or

(b) The order to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission or officer, if (1) the statute conferring jurisdiction does not prescribe the contents of the record, and (2) the rules of the courts of appeals with venue do not require the printing of the entire record to be filed, and (3) the agency, board, commission, or officer elects to file all of the foregoing; or

(c) If the agency, board, commission, or officer is not eligible under (b) above to elect, or does not elect, to file all of the material there specified, such portions thereof as (1) the rules of the court of appeals with venue require, or (2) the parties by written stipulation, consistent with such rules, designate, or (3) the court upon motion of any party, or on its own motion, designates, but if the correctness of a finding of fact is in question, all the evidence shall be included except such portion thereof as the parties agree to omit.

The bill would authorize the courts of appeals, with the approval of the Judicial Conference of the United States, to make rules, not inconsistent with the foregoing provisions, with respect to the content of the record to be filed, and with respect to the time and manner of filing the record if the statute conferring jurisdiction does not prescribe the time and manner of filing. Since the foregoing provisions authorize the parties to abbreviate the record by stipulation consistent with the rules of the court, and authorize the court by order to designate the contents of the record, the possible area for the operation of such rules with respect to the contents of the record appear to be to limit abbreviation of the record by the parties and to state the limits within which the court would require abbreviation if the agency, board, commission, or officer is not eligible to elect, or does not elect, to file the entire record of the proceedings before it without abbreviation.

The new section would further provide that the agency, board, commission, or officer may transmit to the court of appeals either the original papers comprising the record to be filed or certified true copies of such papers. The apparent purpose of this provision is to authorize the agency, board, commission, or officer to file the original papers in those circumstances in which it considers that the expense of preparing copies would be unjustified. It is evidently intended, nevertheless, that if the bill is enacted the Judicial Conference of the United States might approve rules of court which might under some circumstances require the printing of the entire record to be filed, because subsection (b) of the new section provides that, if the rules of court require the printing of the entire record to be filed, the agency, board, commission or officer shall not have the option of filing the entire record of the proceedings before it without abbreviation.

Sections 29 and 30 of the Shipping Act, 1916, as amended (46 U. S. C. 828–829), make orders issued by the Federal Maritime Board under that act enforceable in the United States district courts. The bill, therefore, would not apply to proceedings to enforce such orders.

Public Law 901, 81st Congress (the act of Dec. 29, 1950, 64 Stat. 1129) (5 U. S. C. 1031–1042), however, confers on the United States courts of appeals jurisdiction to review orders issued by the Federal Maritime Board under the Shipping Act, 1916, and provides (sec. 6) that the record to be filed in the court of appeals in such proceedings shall consist of the pleadings, evidence and proceedings before the agency or such portions thereof as the rules of court require or such portions as the parties, with the approval of the court of appeals, agree upon in writing.

The bill would amend section 6 of Public Law 901 to provide that the record to be filed shall be the record provided for in section 2112 of title 28, United States Code. This amendment would change existing statutory law in the following respect: (1) It would require that all of the evidence be included in the record if the correctness of a finding of fact is in question; and (2) it would give the Board the option of filing the entire record of the proceedings before it without abbreviation in those cases in which the rules of court do not require the printing of the entire record to be filed.

The bill would amend section 611 of the Merchant Marine Act, 1936, as amended, which provides that, if an operating-differential subsidy contractor believes that the United States has without just cause defaulted upon, or canceled, his operating-differential subsidy contract, he may apply to the Maritime Commission, setting forth his contentions, for permission to transfer his vessels to foreign registry, and if the Commission, after hearing, finds affirmatively on the



issue, it shall grant the application, but otherwise deny it. Section 611 further provides that if the application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia by filing in that court a written petition, a copy of which shall be served upon any member of the Commission, or upon any officer thereof designated for that purpose, and the Commission shall thereupon file in the court a transcript of the record upon which the order was entered and upon such filing the court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause and to affirm or set aside such order.

Section 17 of the bill would amend this section 611 of the 1936 act to provide that a copy of the petition for review shall be served on a member of the Board rather than on a member of the Commission, that the record provided for in section 2112 of title 5 of the United States Code shall be filed in the court rather than a transcript of the record upon which the order was entered, and that the jurisdiction of the court shall attach when the petition for review is filed rather than when the record is filed.

Reorganization Plan No. 21 of 1950 abolished the Maritime Commission, created the Federal Maritime Board, and divided between the Federal Maritime Board and the Secretary of Commerce the functions the Maritime Commission had under various statutes. Under the Plan, the functions under section 611 of the Merchant Marine Act, 1936, would be exercised in some cases by the Federal Maritime Board and in others by the Secretary of Commerce. Under section 905 (e) of the Merchant Marine Act, 1936, as amended (Public Law 586, 82d Cong.; 66 Stat. 760), the word "Commission," as used in the Merchant Marine Act, 1936, means the Federal Maritime Board or the Secretary of Commerce, as the context may require to conform to Reorganization Plan 21 of 1950. Section 17 should be amended to let this definition operate properly under Reorganization Plan No. 21. This can be accomplished simply by restoring in section 17 of the bill the word "Commission" in place of the word "Board" wherever it appears in the section.

The bill would provide for abbreviated records to be filed in courts of appeals in proceedings in those courts to review or enforce orders of agencies, boards, commissions, or officers of the United States and for review or enforcement of such orders on the basis of the original papers, and would make the time of the filing of the petition for review the time for the attaching of the court's jurisdiction.

If section 17 of the bill is amended as suggested, the Federal Maritime Board would have no objection to enactment of the bill.

Sincerely yours,

CLARENCE G. MORSE, *Chairman.*

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POST OFFICE DEPARTMENT,  
OFFICE OF THE POSTMASTER GENERAL,  
Washington, D. C., July 5, 1956.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to the request for a report on H. R. 6682, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

The proposed legislation relates to procedure for appeal from orders of administrative agencies. It would supplement the Administrative Procedure Act by prescribing for a uniform record to be sent to the courts by the agencies and authorizes the filing of a short copy of the record upon stipulation of the parties. Where proceedings for review of the same administrative orders are filed in two or more courts, the proposed legislation would require the agency to file the record "in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved"; whereas, the current law provides in such instances that the court in which an appeal is first docketed retains jurisdiction.

Section 5, pages 8 and 9 of the bill, relates to the Post Office Department. Pursuant to section 2 of the act of July 28, 1916 (39 U. S. C., sec. 576), the owner of any publication required by departmental order to be transmitted by freight is authorized to apply to the Department for an opportunity to be heard, if he

believes that he is being unfairly discriminated against. The publisher is given the right to appeal to the United States Court of Appeals of the District of Columbia for a review of the departmental order. It is provided that "A copy of such petition shall be forthwith served upon the Post Office Department and thereupon the said Department forthwith shall certify and file in the court a transcript of the record and testimony. Upon the filing of such transcript the court shall have jurisdiction to affirm, set aside, or modify the order of the Department."

Section 5 of the bill would make certain changes in the procedural requirements of the two sentences quoted, so that the sentences would read: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Post Office Department and thereupon the said Department shall file in the court the record, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Department." This change would conform the provisions of section 576 of title 39, United States Code, to the requirements of proposed new section 2112 of title 28 of the United States Code which would be added by section 2 of the bill.

This Department has no objection to the enactment of the legislation.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to the committee.

Sincerely yours,

MAURICE H. STANS,  
*Deputy Postmaster General.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*July 11, 1956.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in response to your requests of May 4 and 7, 1956 (the latter request to the Surgeon General of the Public Health Service), for a report on H. R. 6682, as bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

The provisions of the bill are entirely of a technical legal character. There are herewith enclosed comments, prepared by the Office of the General Counsel, on those provisions of the bill which would affect this Department. Subject to the committee's consideration of the suggestions made in the enclosed memorandum, we would have no objection to enactment of the bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

M. B. FOLSOM, *Secretary.*

#### COMMENTS ON H. R. 6682

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

We understand that the bill embodies a legislative proposal of the Committee on Revision of the Laws of the Judicial Conference of the United States. It reflects to some extent suggestions made by this Department to Judge Albert B. Maris, Chairman of that Committee, in connection with a preliminary draft of the bill.

The whole matter of records and briefs on review of administrative action has also been under study by the President's Conference on Administrative Procedure. We cooperated with the Conference's Committee on Judicial Review. The Committee's recommendations adopted by the Conference appear on pages 4 and 5, report of the Conference on Administrative Procedure. These recommendations concern only the filing of an abbreviated record and do not also concern rule-prescribing power of the courts of appeals as to the time and manner of filing, and the contents of, the record, as the bill does. However, the President's Confer-



ence, in its comments on this matter, expressly stated that its recommendation "is not intended to constitute an exclusive prescription of the provisions of such a statute, nor is it intended to preclude the addition of other provisions, if such are determined to be desirable or necessary." It then called attention to the preliminary draft statute of the Committee on Revision of Laws of the Judicial Conference. Within their scope the recommendations of the President's Conference are substantially in accord with the provisions of the bill.

Subject to the committee's consideration of the comments and suggestions made below, the provisions of the bill, insofar as they involve the interests of this Department, would seem to constitute desirable steps toward facilitating judicial review of administrative action by courts of appeals and toward the promotion of uniformity in that respect.

Our specific comments on the provisions of the bill of concern to the Department are as follows:

1. Subsection (a) of the proposed title 28, United States Code, section 2112, which is in section 2 of the bill, would empower the United States courts of appeals, with respect to proceedings for judicial review of agency orders by such courts, to adopt rules prescribing the time and manner of filing, and the contents, of the record where the applicable statute does not specifically prescribe these requirements. In the case of this Department, this provision would apply to the following proceedings:

(a) Review—under section 701 (f) (1) of the Federal Food, Drug, and Cosmetic Act, as amended by section 21 of this bill—of orders to issue, amend, or repeal regulations under sections 401, 403 (j), 404 (a), 406 (a) and (b), 501 (b), 502 (d), 502 (h), 504, or 604 of the Federal Food, Drug, and Cosmetic Act;

(b) Review of orders on tolerances for pesticide chemicals in or on raw agricultural commodities (sec. 408 (i) of the Federal Food, Drug, and Cosmetic Act, as amended by sec. 20 of this bill);

(c) Appeals from certain actions of the Surgeon General under the hospital and medical facilities construction program (sec. 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b))), as amended by section 27 of this bill;

(d) Review of certain actions of the Commissioner of Education relating to the construction of school facilities in areas affected by Federal activities (sec. 207 (b) of the act of September 23, 1950, as amended (20 U. S. C. 277 (b))).

2. Subsection (a) of the proposed section 2112 would, when judicial-review proceedings have been instituted in 2 or more courts of appeals with respect to the same agency order, require the agency to "file the record in that 1 of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" (presumably including the agency). The other courts would thereupon be required to transfer their cases to the court in which the record was filed. The courts would seem to have no discretion in the matter.

In the light of experience, we believe that provisions for bringing together and in effect consolidating parallel review proceedings in different circuits involving the same administrative action are desirable from the point of view of conserving the time of the courts and administrative agencies, avoiding unnecessary expense in filing two or more copies of the record, and avoiding delay, uncertainty and confusion, and possible conflicts of opinion among coordinate courts. The Committee may, however, wish to consider whether, as proposed by the bill, the provision should be mandatory upon the agency, whether the agency's judgment should be final, and whether the court selected should necessarily be one of the courts in which a review proceeding was theretofore commenced. A complication, moreover, may arise out of the fact that the record may already have been filed in one court, and the case heard and possibly even decided, by that court before judicial-review proceedings are commenced elsewhere.

One possible alternative would be to provide that the court in which a proceeding for judicial review of an agency order is first commenced shall have exclusive jurisdiction and that other courts shall transfer their cases to that court, except that the first court, upon application of the agency or of any other party in interest, may transfer all the proceedings (including those transferred to it from other courts) (a) to any other court of appeals stipulated by the parties or (b), in the absence of such stipulation, to any other court of appeals in which in the deciding court's judgment the convenience of all the parties would be best served.

3. Subsection (b) of the proposed section 2112 would authorize the use of an abbreviated record, in accordance with court rules, stipulation of the parties, or order of the court, but provides that if the rules of the court do not require the

printing of the entire record in that court the agency may nevertheless, at its option, file the entire record of the proceedings before it without abbreviation.

These provisions are satisfactory to us in their present form.

4. Section 20 of the bill would amend section 408 (i) (2) and (3) of the Federal Food, Drug, and Cosmetic Act (relating to tolerances for pesticide chemicals in or on raw agricultural commodities) in three respects: A copy of the petition for judicial review filed with the court would have to be forthwith transmitted by the clerk of the court to the Secretary whose order is to be reviewed, instead of being "served" on the Secretary. Secondly, the time, manner, and contents of the administrative record to be filed with the court would have to conform to the proposed section 2112 of title 28 of the United States Code. Thirdly, the jurisdiction of the court would attach upon the filing of the petition for judicial review, not (as under present law) upon the filing of the record with the court.

We believe that these changes would be desirable improvements in the law, though we regard the first change above as largely one of form rather than of substance. The reference to "subsection (1)" on page 19, line 25, however, is a typographical error. It should read "subsection (1)".

5. Section 21 of the bill would amend section 701 (f) of the Federal Food, Drug, and Cosmetic Act to provide in effect that the filing and contents of the administrative record with the court shall be governed by the proposed section 2112 of title 21, United States Code. We believe that, in the interest of uniformity within the Federal Food, Drug, and Cosmetic Act the additional changes contained in section 20 of the bill, above referred to, should also be incorporated in section 21. We therefore suggest that section 21 be changed to read as follows:

"SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 371 (f), are amended to read as follows: 'A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code.'

"(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 371 (f)) is amended to read as follows: 'Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.' "

6. Similarly, we suggest that, in line with the above-mentioned changes, section 27 (a) of the bill (p. 24, lines 17-23), be changed to read as follows:

"SEC. 27. (a) Paragraph (1) as amended, of section 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b) (1)) is amended to read as follows:

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose, and thereupon the Surgeon General shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.' "

7. Again, in order to make the section on review of actions of the Commissioner of Education consistent with these changes, we suggest the following changes which we believe are largely clarifying rather than additive of substantive law. Change section 33 in the bill (p. 28, lines 11-12) to section 34 and add a new section to read as follows:

"SEC. 33. Section 207 (b) of the Act of September 23, 1950, as amended (20 U. S. C. 277 (b)) is amended by adding at the end of that subsection the following: 'A copy of a notice of appeal shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of a notice of appeal with it, the court shall have jurisdiction to affirm or set aside the decision of the Commissioner in whole or in part.' "



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**PROCEEDINGS BEFORE THE JUDICIAL  
CONFERENCE OF THE UNITED STATES**

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ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,  
*Washington, D. C., June 20, 1956.*

MR. CYRIL F. BRICKFIELD,  
*Office of the House Committee on the Judiciary,*  
*Washington, D. C.*

DEAR MR. BRICKFIELD: I am glad to send you with this copies of reports of meetings of the Judicial Conference of the United States held in September 1953, April 1954, March 1955, and March 1956. You will find references to the subject of abbreviation of the record on the review or enforcement of orders of administrative agencies provided for in the pending bill (H. R. 6682) on the following pages of the reports:

September 1953, pages 25-26; April 1954, pages 17-18; March 1955, pages 16-17; and March 1956, page 20.

Also I enclose (although I think you probably have a copy) a copy of the report on the subject made by the Committee on Revision of the Laws on March 14, 1955.

I hope that these materials will be helpful to you and I remain, with kind regards,

Sincerely yours,

HENRY P. CHANDLER.

### COMMITTEE ON REVISION OF THE LAWS

(Judicial Conference, September 24-25, 1953, Washington, D. C.)

Judge Maris, Chairman of the Committee on Revision of the Laws, submitted an interim report. The Committee believes that it would be desirable to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary and to authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of the review proceedings. This would require an amendment of existing statutes. The Committee has prepared a tentative draft of a bill for this purpose and recommended that it be authorized to submit the draft to the circuit judges and the agencies concerned for their consideration and suggestions. The Committee also recommended that the President's conference on administrative procedure be requested to consider the proposal and give the Committee its suggestions. In the light of such consideration and suggestions received the Committee would plan to present a definitive draft of bill to a later session of the Conference. The Conference authorized and requested the Committee to include in its tentative draft provisions covering petitions for enforcement of administrative agency orders as well as proceedings to review such orders, and with this amendment it authorized the circulation of the draft in accordance with the recommendation of the Committee.

#### **RULES ADOPTED BY COURTS OF APPEALS FOR REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES**

Section 11 of Public Law 901 of the Eighty-first Congress approved December 29, 1950 (64 Stat. 1129; 5 U. S. C. Supp. V, 1041), provides for the adoption, subject to the approval of the Judicial Conference, of rules governing the practice and procedure in proceedings to review or enforce orders of certain administrative agencies. The Conference approved a rule adopted by the Court of Appeals of the Eighth Circuit pursuant to this provision.

## COMMITTEE ON REVISION OF THE LAWS

(Judicial Conference, April 15, 16, 1954, Washington, D. C.)

Judge Maris, Chairman, submitted the report of the Committee on Revision of the Laws:

## RECORD ON REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES

The Committee had circulated among the circuit judges and agencies concerned a preliminary draft bill to authorize an abbreviated record on the review of agency orders pursuant to authority granted by the Conference to do so at the September, 1953, session (report, p. 25). A revised bill was submitted to the Conference which would add to title 28, United States Code, a new section 2112, entitled "Record on review and enforcement of agency orders." The courts of appeals would be given power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings, unless the applicable statute makes specific provision on the subject. Specific statutory provisions would be unnecessary hereafter, however, if the proposed bill is enacted. If proceedings have been instituted in two or more courts with respect to the same order the agency would file the record in that court which would be most convenient to the parties and the other courts would then transfer their proceedings to that court. The record would be abbreviated by the inclusion only of such material as the rules of court required or as the parties, including parties permitted to intervene by the court, stipulated or as the court designated by order. In appropriate cases it could be stipulated that no record at all be filed. Provision is made that additional portions of the record might be ordered by the court to be filed if found to be needed. It had been represented to the committee that in some cases it would be more costly in time and money to attempt to abbreviate the record than to send it all to the court. Accordingly the Committee had included in the bill a provision giving the agencies the right to file the entire record in those courts only which, in view of their use of the appendix system or modified printed record system, do not require the entire record to be printed.

At the option of the agency original papers in lieu of certified copies would be permitted to be transmitted to the reviewing court. The Committee considered it desirable to provide that the court should have jurisdiction upon the filing of the petition for review instead of upon the filing of the transcript of record as at present in some cases. However, since some agencies have power to modify or set aside an order after the filing of a petition for review and until the time of filing the record, which they wish to retain, the Committee has proposed to amend these statutes so that jurisdiction is acquired upon the filing of a petition for review but is not exclusive until the filing of the record. Perfecting amendments of various statutes had also been included in the bill.

After consideration of the Committee's report, the Conference approved the draft of the proposed bill for recommendation to Congress for enactment.

## REAFFIRMATION OF APPROVAL OF BILLS PREVIOUSLY RECOMMENDED BY THE CONFERENCE

(Judicial Conference, March 13, 14, 1955, Washington, D. C.)

The Conference voted to reaffirm its recommendation of the following bills heretofore recommended for enactment by Congress:

1. S. 2223 and H. R. 6682, each entitled "A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes" (Judicial Conference Report) March 1955, session pp. 16, 17).

## AMENDMENTS TO RULES ADOPTED BY COURTS OF APPEALS FOR REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES

The Courts of Appeals for the District of Columbia Circuit, First Circuit and Sixth Circuit submitted to the Conference for approval pursuant to the provisions of the Act of December 29, 1950 (64 Stat. 1129, 1132; 5 U. S. C. 1041) amendments to rules adopted by those courts relating to the review and enforcement of orders



of administrative agencies. The amendments were approved. The rules involved are as follows: District of Columbia Circuit, rule 38 paragraph g; First Circuit, rule 16 paragraph 7; and Sixth Circuit, rule 13.

COMMITTEE ON REVISION OF THE LAWS

(March 14, 1955)

Report

*To the Judicial Conference of the United States:*

Your Committee on Revision of the Laws submits the following report:

I

Record on Review of Orders of Administrative Agencies

At its special session in April 1954, the Judicial Conference approved a draft bill prepared by our Committee to authorize an abbreviated record on review or enforcement of agency orders by the courts of appeals. Subsequent conferences by our Committee with the Committee on Judicial Review of the President's Conference on Administrative Procedure and with counsel for the Federal Power Commission, as well as two statutes enacted at the last session of Congress, have indicated the need for some modifications of the bill. Certain editorial changes were also found to be needed. Your Committee has accordingly prepared a revised draft of the bill which is annexed to this report marked A, and we recommend its approval. We call attention to the following changes:

The former draft of subsection (a) of the proposed section 2112 of title 28 provided that if proceedings have been instituted in two or more courts with respect to the same order the agency "shall file the record in that one of such courts in which the proceedings may be carried on with the greatest convenience to all the parties involved" and the "other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed." The case law upholds this procedure and it was the recommendation of your Committee, with which the Judicial Conference concurred, that the procedure be given a statutory basis but with the addition of a criterion, "the greatest convenience to all the parties involved", which should govern the agency's selection of the forum. The President's Conference on Administrative Procedure, through its Committee on Judicial Review, was in agreement with the establishment of such a criterion but was fearful that it might lead to dilatory litigation as to whether the choice of venue by the agency accorded with the statutory test. It was not the intention of your Committee to open the way for dilatory litigation as to the balance of convenience of the parties, as this would certainly not be in the public interest, but merely to indicate that the agency should make its choice of venue on that basis. Your Committee accordingly agreed with the Committee of the President's Conference to recommend adding to the draft statute at this point the phrase "in its judgment," so as to make clear that the choice of forum by the agency should not be reviewable except possibly for a clear abuse of discretion. The amended draft statute annexed to this report accordingly contains this phrase.

Another change is in sections 16 and 19 to include amendments to the Federal Power Act and the Natural Gas Act to make clear that the Federal Power Commission will continue to have authority to modify or revoke its orders made under those acts after petitions for review have been filed but before the record has been filed in court. Under the scheme of the bill the court of appeals is to have jurisdiction from the time of filing the petition. Without such a saving provision the present authority of the Commission to deal with an order in the interim between the filing of the petition and the record might be doubtful. It would seem clear that the power should be retained. The Commission has requested that the point be clarified in the bill and our Committee recommends that the amendments included in sections 16 and 19 to that end be approved.

The only other changes to which attention need be directed are the inclusion of new section 20 amending section 408 of the Federal Food, Drug, and Cosmetic Act relating to pesticide chemicals which was added by the act of July 22, 1954 (68 Stat. 515), and the elimination of former section 26 amending section 11 (e) (4) of the Atomic Energy Act of 1946. That act has been superseded by the Atomic Energy Act of 1954 (68 Stat. 921), under which judicial review of the

orders of the Atomic Energy Commission is had under the provisions of the Hobbs Act of December 29, 1950. Old sections 20 to 25 have been renumbered 21 to 26.

Your Committee recommends that the draft bill in the form hereto annexed be approved and submitted to Congress.

\* \* \* \* \*

CLARENCE G. GALSTON.  
WILLIAM F. SMITH.  
ALBERT B. MARIS, *Chairman*.

MARCH 14, 1955.

A BILL To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders."

SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

"§2112. Record on review and enforcement of agency orders.

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify or otherwise review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. The record in such proceedings shall be certified and filed in the court of appeals by the agency, board, commission or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence and proceedings before the agency, board, commission or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission or officer is in question all of the evidence before the agency, board, commission or officer shall be included in the record except such as the agency, board, commission or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.



“(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review proceedings.

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: “Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.”

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112–113), are amended to read as follows: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] as provided in section 2112 of title 28, United States Code.* Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite.*”

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

“(d) [The] *Upon the filing of the record with it* the jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive” (15 U. S. C., § 45, Federal Trade Commission).

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: “Until [a transcript of] the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.”

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), are amended to read as follows:

“If such person fails or neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall [certify and] file [with its application a transcript of] the [entire] record in the proceeding, [including all the testimony taken and the report and order of the Commission or Board] *as provided in section 2112 of title 28, United States Code.* Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission or Board.”

(NOTE.—The new statutory provisions inserted by the amendments are italicized and the present statutory provisions stricken out by the amendments are enclosed in [brackets].

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Commission or Board and thereupon the Commission or Board [forthwith] shall [certify and] file in the court [a transcript of] the record in the proceeding, as [hereinbefore] provided in section 2112 of title 28, *United States Code*. Upon the filing of [the transcript] *such petition* the court shall have the same jurisdiction to affirm, set aside, or modify the order of the the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, *determined as provided in section 10 (e) of the Administrative Procedure Act*, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows:

"[The] *Upon the filing of the record with it* the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive" (15 U. S. C., sec. 21, Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System).

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Post Office Department and thereupon the said department [forthwith] shall [certify and] file in the court [a transcript of] the record [and testimony], *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* the court shall have jurisdiction to affirm, set aside, or modify the order of the department" (39 U. S. C., sec. 576, Postmaster General (District of Columbia Circuit only)).

SEC. 6 (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 193, Secretary of Agriculture).

(b) Subsections (b) and (c) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code*. If before such [transcript] *record* is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such [transcript] *petition* is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal" (7 U. S. C., sec. 194, Secretary of Agriculture).

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section [240 of the Judicial Code] *1254 of title 28*, if such writ is duly applied for within sixty days after entry of the decree" (7 U. S. C., sec. 194, Secretary of Agriculture).

SEC. 7. (a) The third sentence of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in



such proceedings, [including the notice to the board of trade, a copy of the charges, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code*" (7 U. S. C., sec. 8, Contract Market Commission).

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended, are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture* [by delivering such copy to him] and thereupon the Secretary of Agriculture shall [forthwith certify and] file in the court [a transcript of] the record theretofore made, [including evidence received] *as provided in section 2112 of title 28, United States Code*. Upon the filing of the [transcript] *petition* the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive" (7 U. S. C., sec. 9, Secretary of Agriculture).

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of the Treasury, or* [upon] any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (19 U. S. C., sec. 1641, Secretary of the Treasury).

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80), is amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission shall* [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*" (15 U. S. C., sec. 77i, Securities and Exchange Commission).

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall* [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part" (15 U. S. C., sec. 78y, Securities and Exchange Commission).

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in the proceedings held before it under this section, [the charges, the evidence, and the order revoking the grant] *as provided in section 2112 of title 28, United States Code*" (19 U. S. C., sec. 81r, Foreign Trade Zone Board).

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719), is amended to read as follows: "Within thirty days after the filing of an appeal, the Commission shall file with the court [a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order] *the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code* (47 U. S. C., sec. 402, Federal Communications Commission (District of Columbia Circuit only)).

SEC. 13. (a) Section (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), is amended to read as follows:

"(d) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), are amended to read as follows:

“(e) The Board shall have power to petition any court of appeals of the United States [(including the United States Court of Appeals for the District of Columbia)], or if all the courts of appeals to which application may be made are in vacation, any district court of the United States [(including the District Court of the United States for the District of Columbia)], within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall [certify and] file in the court [a transcript of] the [entire] record in the proceedings [including the pleadings and testimony upon which such order was entered and the findings and order of the Board], *as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition*, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the [transcript] *record.* \* \* \* [The] *Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in [sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347)] section 1254 of title 28.*”

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148), are amended to read as follows: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Board*, and thereupon the aggrieved party shall file in the court [a transcript of] the [entire] record in the proceeding, certified by the Board [including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board] *as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition*, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same [exclusive] jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive” (29 U. S. C., sec. 160, National Labor Relations Board).

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended, are amended to read as follows: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and]* file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part” (27 U. S. C., sec. 204, Secretary of the Treasury).

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834), are amended to read as follows: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and]* file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part” (15 U. S. C., sec. 79x, Securities and Exchange Commission).



SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended, (49 Stat. 860), is amended by inserting at the end thereof an additional sentence reading as follows: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at anytime, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.*"

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860), are amended to read as follows: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part*" (16 U. S. C., sec. 825 1, Federal Power Commission).

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Board, or [upon] any officer thereof designated by the Board for that purpose, and thereupon the Board shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order*" (46 U. S. C., sec. 1181 (b), Federal Maritime Board (District of Columbia Circuit only)).

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024), is amended to read as follows:

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon [certify and] file in the court [a transcript of] the record, if any, upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*" (49 U. S. C., sec. 646, Civil Aeronautics Board).

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.*"

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such petition [transcript] *such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part*" (15 U. S. C., sec. 717r, Federal Power Commission).

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part.*"

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(3) In the case of a petition with respect to an order such subsection (1), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture, or [upon] any officer designated by him*

for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] *the record* of the proceedings [and the record] on which he based his order, *as provided in section 2112 of title 28, United States Code*. Upon [such] *the filing of such petition*, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part" (21 U. S. C., sec. 346a, Secretary of Health, Education, and Welfare, Secretary of Agriculture).

SEC. 21. The third sentence of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "The Secretary [promptly upon service of the summons and petition,] *thereupon* shall [certify and] file in the court the [transcript] *record* of the proceedings [and the record] on which the Secretary based his order, *as provided in section 2112 of title 28, United States Code*" (21 U. S. C., sec. 371, Secretary of Health, Education, and Welfare).

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to the Secretary*, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner" (29 U. S. C., sec. 210, Secretary of Labor).

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall [certify and] file with the court in which such petition has been filed [a transcript of] the record upon which the findings and decision complained of are based, *as provided in section 2112 of title 28, United States Code*. Upon [such] *the filing of such petition* the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter [upon the pleadings and transcript of the record,] a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court [a transcript of] the additional record" (45 U. S. C., sec. 355, Railroad Retirement Board).

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287, is amended to read as follows:

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 1599, Secretary of Agriculture).

(b) The second and third paragraphs of section 410 of the Federal Seed Act Act (53 Stat. 1288), are amended to read as follows:

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code*. If before such [transcript] *record* is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such [transcript] *petition* is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal" (7 U. S. C., sec. 1600, Secretary of Agriculture).

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its



Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall [certify and] file [with its application a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, the report, and the order] as provided in section 2112 of title 28, United States Code. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon the person against whom the order was issued" (7 U. S. C., sec. 1601, Secretary of Agriculture).

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844) are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to any member of the Commission or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80a-42, Securities and Exchange Commission).

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855) are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to any member of the Commission, or [upon] any officer thereof designed by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80b-13, Securities and Exchange Commission).

SEC. 27. (a) The third sentence of paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows: "The Surgeon General shall [forthwith certify and] *thereupon* file in the court the [transcript] *record* of the proceedings [and the record] on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall [certify to] *file in* the court the [transcript and] *record* of the further proceedings" (42 U. S. C., sec. 291j, Public Health Service).

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927), is amended to read as follows: "Within thirty days after the filing of said appeal the Secretary shall file with the court the [originals or certified copies of all papers and evidence presented to him upon the hearing involved, a like copy of his decision thereon, a full statement in writing of the facts and grounds for his decisions as found and given by him] *record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code*, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal" (7 U. S. C., sec. 1115, Secretary of Agriculture (District of Columbia Circuit only)).

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court* to the Board, and thereupon the Board shall [certify and] file in the court [a transcript] of the [entire] record in the proceeding, [including all evidence taken and the report and order of the Board] as provided in section 2112 of title 28, United States Code. [Thereupon] *Upon the filing of such petition* the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States

Court of Appeals for the circuit wherein the petitioner resides" (50 U. S. C., sec. 793, Subversive Activities Control Board).

Sec. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it" (50 U. S. C., sec. 820, Detention Review Board).

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court [a duly certified transcript of] the [entire] record of the proceedings before the Board with respect to the matter concerning which judicial review is sought [including all evidence upon which the order complained of was entered, the findings and order of the Board] as provided in section 2112 of title 28, United States Code. \* \* \* [Thereupon] Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board" (50 U. S. C., sec. 821, Detention Review Board).

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the [transcript] record" (50 U. S. C., sec. 821, Detention Review Board).

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

"SEC. 6. [Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless] Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, [duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing] as provided in section 2112 of title 28, United States Code" (5 U. S. C., sec. 1036, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131), is amended to read as follows: "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file [a certified transcript of] in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order" (5 U. S. C., sec. 1037, Federal Communications Commission, Secretary of agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

SEC. 32. The second and third sentences of subsection (b) of section 208 of the Federal Coal Mine Safety Act, as amended (66 Stat. 702), are amended to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall [promptly certify and] file in such court [a complete transcript of] the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such [transcript] record shall be paid by the party making [the] such appeal" (30 U. S. C., sec. 478, Federal Coal Mine Safety Board of Review).

SEC. 33. This act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.



## COMMITTEE ON REVISION OF THE LAWS

(Judicial Conference, March 24, 25, 1956, Washington, D. C.)

Judge Maris, Chairman of the Committee on Revision of the Laws, submitted a report on behalf of the Committee.

## RECORD ON REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES

At the April 1954 special session, the Conference approved the draft of a proposed bill submitted by the Committee dealing with the record on review of orders of administrative agencies and its abbreviation (Conference report pp. 17, 18). However, the Committee reported that subsequent conferences with the Committee on Judicial Review of the President's Conference on Administrative Procedure, and with counsel for the Federal Power Commission, and also the enactment of two statutes at the last session of Congress, indicated the need of some modifications of the draft bill. The Committee accordingly had prepared a revised draft which was annexed to its report and which it recommended.

The Conference approved the revised draft for recommendation to Congress for enactment. Besides editorial changes, the following are the principal changes in the revised draft: The words "in its judgment" (referring to the agency) are added to the provision that when review proceedings have been instituted in two or more courts with respect to the same order the agency "shall file the record in that one of such courts in which the proceedings may be carried on with the greatest convenience to all the parties involved" and "other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed." This is for the purpose of avoiding dilatory litigation as to the balance of convenience of the parties, by making clear that the choice of forum by the agency should not be reviewable except possibly for a clear abuse of discretion. Amendments to the Federal Power Act and the Natural Gas Act are included to make clear that the Federal Power Commission will continue to have authority to modify or revoke its orders made under those acts after petitions for review have been filed but before the record has been filed in court. Under the bill the court of appeals is to have jurisdiction from the time of filing the petition and it was considered that without such a saving provision the present authority of the Commission to deal with an order in the interim between the filing of the petition and the record might be doubtful. A new section was added concerning a recent amendment to the Federal Food Drug and Cosmetic Act relating to pesticide chemicals, and a section dealing with the Atomic Energy Act of 1946 was eliminated since that act has now been superseded by the Atomic Energy Act of 1954 under which judicial review of orders of the Atomic Energy Commission is had under the provisions of the Hobbs Act of December 29, 1950.

A recommendation by the Judicial Council of the District of Columbia Circuit that section 646 (d) of title 49 of the United States Code relating to air carriers, and the Hobbs Act approved December 29, 1950 (64 Stat. 1129, 1131), be amended so as to eliminate the requirement that 5 days' notice be given before interlocutory relief may be granted was referred to the Committee at the April 1954 session of the Conference (Conference report p. 19). The Committee reported that it was of the view that the purpose could best be accomplished by the substitution of a requirement for "reasonable notice" in lieu of the fixed provision for 5 days' notice, and submitted the draft of the bill to this end. The Conference approved the report and voted to recommend the proposed bill to Congress for enactment.

A bill (S. 489) entitled "A bill to provide general rules of practice and procedure before Federal agencies" introduced in the present Congress was referred to the Committee for consideration.





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**COMMENTS SUBMITTED  
SUBSEQUENT TO HEARINGS**

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Hon. EDWIN E. WILLIS,  
Chairman, Subcommittee No. 3,  
Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN WILLIS: Supplementing my testimony before your subcommittee on the bill, H. R. 6682, a bill to authorize the abbreviation of the record on review, may I give you a copy of the amended rule No. 38 made effective May 10, 1956, by the United States Court of Appeals for the District of Columbia,

Under this amended rule it is only necessary to file a certified list of all of the documents, transcripts of testimony, exhibits, and other material comprising the record in a proceeding where an administrative order is under review by a court. This greatly simplifies the mechanics of these reviews, does not deprive any party of full opportunity to assert any claims it may desire to urge upon the court and minimizes the expense for the preparation of agency records. We have been using this plan in the Third, Fourth, Fifth, Tenth, and District of Columbia Circuits for some time and it has worked out very effectively.

I do not believe that the bill as introduced expressly authorizes the submission of a list in lieu of the documents themselves, although the amendment suggested by Judge Maris yesterday may serve the purpose.

Our difference with Judge Maris seems to be solely a matter of form. He says that the courts desire legislative authority for the rules they have adopted and we thought that the rules were adopted by the courts with ample authority. There is complete agreement, however, that the courts should not be unduly restricted in this particular.

Respectfully,

WILLARD W. GATCHELL, *General Counsel.*

[Inclosure No. 92908 from Federal Power Commission]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

October Term, 1955

Before Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon,  
Fahy, Washington, Danaher, and Bastian, Circuit Judges, in Chambers

*Order amending rule 38*

It is ordered by the court that paragraph (g) of rule 38 of the general rules of this court be, and it is hereby amended by inserting therein immediately after the first sentence and before the second sentence the following additional sentences:

Within the time prescribed for filing the transcript the agency, board, commission, or officer in lieu of actually transmitting the entire transcript to the clerk of this court may file with him a certified list of all the documents, transcripts of testimony, exhibits, and other material comprising the record in the proceeding, adequately describing each and indicating its page numbers. The custodian of the records of such agency, board, commission, or officer shall thereupon retain and hold all the material comprising the record in the proceeding for and on behalf of the clerk of this court and subject to his orders and shall transmit the same or any part thereof to him when and if required by the court for its use in the review proceeding. The filing of a certified list of the material in the record and the holding of such material for and subject to the directions of the clerk of the court shall be deemed the full equivalent of the filing of the entire transcript of the record in the court.

It is further ordered by the court that the foregoing amendment to paragraph (g) of rule 38 shall not become effective or be promulgated until after approval by the Judicial Conference of the United States and the further order of this court promulgating and making same effective.

PER CURIAM.

Dated October 25, 1955.

Promulgated and made effective May 10, 1956.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT,  
Philadelphia, Pa., May 22, 1956.

HON. EDWIN E. WILLIS,  
Chairman, Subcommittee No. 3.  
Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN WILLIS: At the hearing held by your subcommittee on May 17 on H. R. 6682 the General Counsel for the Federal Power Commission called attention to the procedure recently adopted by rule by a number of the courts of appeals, acting upon a recommendation of the Judicial Conference, that permits an agency in a review proceeding to file in the court merely a list of the papers in the record while retaining in its physical custody the papers themselves, to be transmitted to the court only when and if required.

Our court has found this a useful procedure, saving of time and expense, and we certainly do not want to interfere with it by any provision in H. R. 6682. That bill was drawn before this new procedure was devised, however, and it would, therefore, be advisable to amend the bill so as to recognize the right of the courts by rule to permit this sort of record procedure. This could be accomplished by the following amendments to H. R. 6682:

In line 15, page 2, after "record." and before "THE" insert the following additional sentence: "Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding."

In line 16, page 2, after "filed in" and before "the" insert "or held for"

I hope that the committee will give favorable consideration to these amendments.

I do not understand that the Federal Power Commission is pressing the suggestions for amendment made by its report on the bill submitted to you by its General Counsel. I, therefore, assume that it is unnecessary for me to comment upon them other than to say that I do not believe any of them is necessary or appropriate.

May I express again my gratitude for the full hearing accorded me by your subcommittee on this bill.

Sincerely yours,

ALBERT B. MARIS.

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## LEGISLATIVE HISTORY

H. R. 6788

Public Law 85-791

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## Index and Summary of H. R. 6788

April 10, 1957	Rep. Celler introduced H. R. 6788, which was referred the House Committee on the Judiciary. Print of bill.
June 27, 1957	House Judiciary Committee subcommittee ordered H. R. 6788 reported with amendment.
July 16, 1957	House committee ordered H. R. 6788 reported with amendment.
July 23, 1957	House committee reported H. R. 6788 with amendment. H. Rept. 842. Print of bill and report.
Aug. 5, 1957	House passed H. R. 6788 as reported.
Aug. 6, 1957	H. R. 6788 was referred to the Senate Committee on the Judiciary. Print of bill as referred.
Aug. 1, 1958	Senate committee ordered H. R. 6788 reported without amendment.
Aug. 4, 1958	Senate committee reported H. R. 6788 without amendment. S. Rept. 2199. Print of bill and report.
Aug. 14, 1958	Senate passed H. R. 6788 without amendment.
Aug. 28, 1958	Approved: Public Law 85-791.

Hearing: Before Subcommittee No. 3 of the House Committee on the Judiciary; June 27, 1957.



## DIGEST OF PUBLIC LAW 85-791

ABBREVIATION OF RECORDS BEFORE COURTS OF APPEAL. Authorizes the U. S. courts of appeal to adopt rules authorizing the abbreviation of administrative records when orders of the agencies are before the courts of appeals in review or enforcement proceedings. However, the Department may at its option file in the court the entire record of the administrative proceedings without abbreviation. Sections of the Act relating to this Department include abbreviated administrative records, Packers and Stockyards Act, Commodity Exchange Act, Federal Food, Drug and Cosmetic Act, Federal Seed Act, Sugar Act of 1948, and the so-called Hobbs Act.











85<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 6788

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 1957

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That the analysis of chapter 133 of title 28 of the United  
4        States Code, immediately preceding section 2101 of such  
5        title, is amended by inserting at the end thereof the following  
6        additional item:

“2112. Record on review and enforcement of agency orders.”

1       “SEC. 2. Chapter 133 of title 28 of the United States  
2 Code is amended by inserting at the end of such chapter im-  
3 mediately following section 2111 an additional section, as  
4 follows:

5       “§ 2112. Record on review and enforcement of agency orders

6       “(a) The several courts of appeals shall have power  
7 to adopt, with the approval of the Judicial Conference of  
8 the United States, rules prescribing the time and manner of  
9 filing and the contents of the record in all proceedings insti-  
10 tuted in the courts of appeals to enjoin, set aside, suspend,  
11 modify, or otherwise review or enforce orders of administra-  
12 tive agencies, boards, commissions, and officers, in which  
13 the applicable statute does not specifically prescribe such  
14 time or manner of filing or contents of the record. Such  
15 rules may authorize the agency, board, commission, or officer  
16 to file in the court a certified list of the materials comprising  
17 the record and retain and hold for the court all such materials  
18 and transmit the same or any part thereof to the court, when  
19 and as required by it, at any time prior to the final determi-  
20 nation of the proceeding. The record in such proceedings  
21 shall be certified and filed in or held for the court of appeals  
22 by the agency, board, commission, or officer concerned within  
23 the time and in the manner prescribed by such rules. If  
24 proceedings have been instituted in two or more courts of  
25 appeals with respect to the same order the agency, board,

1 commission, or officer concerned shall file the record in that  
2 one of such courts in which in its judgment the proceedings  
3 may be carried on with the greatest convenience to all the  
4 parties involved. The other courts in which such proceed-  
5 ings are pending shall thereupon transfer them to the court  
6 of appeals in which the record has been filed.

7 “(b) The record to be filed in the court of appeals in  
8 such a proceeding shall consist of the order sought to be re-  
9 viewed or enforced, the findings or report upon which it is  
10 based, and the pleadings, evidence, and proceedings before  
11 the agency, board, commission, or officer concerned, or such  
12 portions thereof (1) as the said rules of the court of appeals  
13 may require to be included therein, or (2) as the agency,  
14 board, commission, or officer concerned, the petitioner for  
15 review or respondent in enforcement, as the case may be,  
16 and any intervenor in the court proceeding by written stip-  
17 ulation filed with the agency, board, commission, or officer  
18 concerned or in the court in any such proceeding may con-  
19 sistently with the rules of such court designate to be included  
20 therein, or (3) as the court upon motion of a party or, after  
21 a prehearing conference, upon its own motion may by order  
22 in any such proceeding designate to be included therein.  
23 Such a stipulation or order may provide in an appropriate case  
24 that no record need be filed in the court of appeals. If, how-  
25 ever, the correctness of a finding of fact by the agency, board,



1 commission, or officer is in question all of the evidence before  
2 the agency, board, commission, or officer shall be included in  
3 the record except such as the agency, board, commission, or  
4 officer concerned, the petitioner for review or respondent in  
5 enforcement, as the case may be, and any intervenor in the  
6 court proceeding by written stipulation filed with the agency,  
7 board, commission, or officer concerned or in the court agree  
8 to omit as wholly immaterial to the questioned finding. If  
9 there is omitted from the record any portion of the proceed-  
10 ings before the agency, board, commission, or officer which  
11 the court subsequently determines to be necessary for it to  
12 consider to enable it to review or enforce the order in  
13 question the court may direct that such additional portion  
14 of the proceedings be filed as a supplement to the record.  
15 If the rules of the court of appeals in which a proceeding  
16 is pending do not require the printing of the entire record  
17 in that court the agency, board, commission, or officer con-  
18 cerned may, at its option and without regard to the fore-  
19 going provisions of this subsection, file in the court the  
20 entire record of the proceedings before it without  
21 abbreviation.

22       “(c) The agency, board, commission, or officer con-  
23 cerned may transmit to the court of appeals the original  
24 papers comprising the whole or any part of the record or  
25 any supplemental record, otherwise true copies of such papers

1 certified by an authorized officer or deputy of the agency,  
2 board, commission, or officer concerned shall be transmitted.  
3 Any original papers thus transmitted to the court of appeals  
4 shall be returned to the agency, board, commission, or officer  
5 concerned upon the final determination of the review or  
6 enforcement proceeding. Pending such final determination  
7 any such papers may be returned by the court temporarily to  
8 the custody of the agency, board, commission, or officer con-  
9 cerned if needed for the transaction of the public business.  
10 Certified copies of any papers included in the record or any  
11 supplemental record may also be returned to the agency,  
12 board, commission, or officer concerned upon the final deter-  
13 mination of review proceedings.”

14 SEC. 3. (a) The sixth sentence of subsection (b) of  
15 section 5 of the Federal Trade Commission Act, as amended  
16 (52 Stat. 112), is amended to read as follows: “Until the  
17 expiration of the time allowed for filing a petition for review,  
18 if no such petition has been duly filed within such time, or, if  
19 a petition for review has been filed within such time then  
20 until the record in the proceeding has been filed in a court  
21 of appeals of the United States, as hereinafter provided, the  
22 Commission may at any time, upon such notice and in such  
23 manner as it shall deem proper, modify or set aside, in whole  
24 or in part, any report or any order made or issued by it  
25 under this section.”

1       (b) The second and third sentences of subsection (c)  
2 of section 5 of the Federal Trade Commission Act, as  
3 amended (52 Stat. 112-113), are amended to read as fol-  
4 lows: "A copy of such petition shall be forthwith trans-  
5 mitted by the clerk of the court to the Commission, and  
6 thereupon the Commission shall file in the court the record  
7 in the proceeding, as provided in section 2112 of title 28,  
8 United States Code. Upon such filing of the petition the  
9 court shall have jurisdiction of the proceeding and of the  
10 question determined therein and shall have power to make  
11 and enter a decree affirming, modifying, or setting aside the  
12 order of the Commission, and enforcing the same to the  
13 extent that such order is affirmed and to issue such writs as  
14 are ancillary to its jurisdiction or are necessary in its judg-  
15 ment to prevent injury to the public or to competitors  
16 pendente lite."

17       (c) Subsection (d) of section 5 of the Federal Trade  
18 Commission Act, as amended (52 Stat. 113), is amended  
19 to read as follows:

20       "(d) Upon the filing of the record with it the jurisdic-  
21 tion of the court of appeals of the United States to affirm,  
22 enforce, modify, or set aside orders of the Commission shall  
23 be exclusive."

24       SEC. 4. (a) The sixth sentence of the second paragraph  
25 of section 11 of the Act of October 15, 1914, as amended



1 (64 Stat. 1127), is amended to read as follows: "Until the  
2 record in such hearing shall have been filed in a United  
3 States court of appeals, as hereinafter provided, the Commis-  
4 sion or Board may at any time, upon such notice, and in such  
5 manner as it shall deem proper, modify or set aside, in whole  
6 or in part, any report or any order made or issued by it  
7 under this section."

8 (b) The first and second sentences of the third para-  
9 graph of section 11 of the Act of October 15, 1914, as  
10 amended (64 Stat. 1127), are amended to read as follows:  
11 "If such person fails or neglects to obey such order of the  
12 Commission, or Board while the same is in effect, the Com-  
13 mission or Board may apply to the United States court of  
14 appeals, within any circuit where the violation complained  
15 of was or is being committed or where such person resides  
16 or carries on business, for the enforcement of its order, and  
17 shall file the record in the proceeding, as provided in section  
18 2112 of title 28, United States Code. Upon such filing of  
19 the application the court shall cause notice thereof to be  
20 served upon such person, and thereupon shall have jurisdic-  
21 tion of the proceeding and of the question determined therein,  
22 and shall have power to make and enter a decree affirming,  
23 modifying, or setting aside the order of the Commission or  
24 Board."

25 (c) The second and third sentences of the fourth para-

1 graph of section 11 of the Act of October 15, 1914, as  
2 amended (64 Stat. 1128), are amended to read as follows:  
3 “A copy of such petition shall be forthwith transmitted by  
4 the clerk of the court to the Commission or Board and  
5 thereupon the Commission or Board shall file in the court  
6 the record in the proceeding, as provided in section 2112  
7 of title 28, United States Code. Upon the filing of such  
8 petition the court shall have the same jurisdiction to affirm,  
9 set aside, or modify the order of the Commission or Board  
10 as in the case of an application by the Commission or Board  
11 for the enforcement of its order, and the findings of the  
12 Commission or Board as to the facts, if supported by sub-  
13 stantial evidence, determined as provided in section 10 (e)  
14 of the Administrative Procedure Act, shall in like manner  
15 be conclusive.”

16 (d) The fifth paragraph of section 11 of the Act of  
17 October 15, 1914, as amended (64 Stat. 1128), is amended  
18 to read as follows:

19 “Upon the filing of the record with it the jurisdiction  
20 of the United States court of appeals to enforce, set aside,  
21 or modify orders of the Commission or Board shall be  
22 exclusive.”

23 SEC. 5. The fourth and fifth sentences of the first para-  
24 graph of section 2 of the Act of July 28, 1916 (39 Stat.  
25 425), are amended to read as follows: “A copy of such

1 petition shall be forthwith transmitted by the clerk of the  
2 court to the Post Office Department and thereupon the said  
3 Department shall file in the court the record, as provided  
4 in section 2112 of title 28, United States Code. Upon the  
5 filing of such petition the court shall have jurisdiction to  
6 affirm, set aside or modify the order of the Department.”

7 SEC. 6. (a) Subsection (c) of section 203 of the  
8 Packers and Stockyards Act, 1921 (42 Stat. 162), is  
9 amended to read as follows:

10 “(c) Until the record in such hearing has been filed  
11 in a court of appeals of the United States, as provided in  
12 section 204, the Secretary at any time, upon such notice  
13 and in such manner as he deems proper, but only after  
14 reasonable opportunity to the packer to be heard, may  
15 amend or set aside the report or order, in whole or in part.”

16 (b) Subsections (b) and (c) of section 204 of the  
17 Packers and Stockyards Act, 1921 (42 Stat. 162), are  
18 amended to read as follows:

19 “(b) The clerk of the court shall immediately cause  
20 a copy of the petition to be delivered to the Secretary, and  
21 the Secretary shall thereupon file in the court the record  
22 in such proceedings, as provided in section 2112 of title 28,  
23 United States Code. If before such record is filed the  
24 Secretary amends or sets aside his report or order, in whole



1 or in part, the petitioner may amend the petition within such  
2 time as the court may determine, on notice to the Secretary.

3 “(c) At any time after such petition is filed, the court,  
4 on application of the Secretary, may issue a temporary  
5 injunction restraining, to the extent it deems proper, the  
6 packer and his officers, directors, agents, and employees,  
7 from violating any of the provisions of the order pending  
8 the final determination of the appeal.”

9 (c) The first sentence of subsection (h) of section 204  
10 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is  
11 amended to read as follows:

12 “(h) The court of appeals shall have jurisdiction, which  
13 upon the filing of the record with it shall be exclusive, to re-  
14 view, and to affirm, set aside, or modify, such orders of the  
15 Secretary, and the decree of such court shall be final except  
16 that it shall be subject to review by the Supreme Court of the  
17 United States upon certiorari, as provided in section 1254 of  
18 title 28, if such writ is duly applied for within sixty days  
19 after entry of the decree.”

20 SEC. 7. (a) The third sentence of paragraph (a) of sec-  
21 tion 6 of the Commodity Exchange Act (42 Stat. 1001), is  
22 amended to read as follows: “The clerk of the court in which  
23 such a petition is filed shall immediately cause a copy thereof  
24 to be delivered to the Secretary of Agriculture, Chairman of  
25 said Commission, or any member thereof, and the said Com-

1 mission shall thereupon file in the court the record in such  
2 proceedings, as provided in section 2112 of title 28, United  
3 States Code.”

4 (b) The seventh and eighth sentences of paragraph (b)  
5 of section 6 of the Commodity Exchange Act (42 Stat.  
6 1002), as amended, are amended to read as follows: “A  
7 copy of such petition shall be forthwith transmitted by the  
8 clerk of the court to the Secretary of Agriculture and there-  
9 upon the Secretary of Agriculture shall file in the court the  
10 record theretofore made, as provided in section 2112 of title  
11 28, United States Code. Upon the filing of the petition the  
12 court shall have jurisdiction to affirm, to set aside, or modify  
13 the order of the Secretary of Agriculture, and the findings of  
14 the Secretary of Agriculture as to the facts, if supported by  
15 the weight of evidence, shall in like manner be conclusive.”

16 SEC. 8. The third and fourth sentences of the second  
17 paragraph of subsection (b) of section 641 of the Tariff Act  
18 of 1930, as amended (49 Stat. 865), are amended to read  
19 as follows: “A copy of such petition shall be forthwith  
20 transmitted by the clerk of the court to the Secretary of the  
21 Treasury, or any officer designated by him for that purpose,  
22 and thereupon the Secretary of the Treasury shall file in the  
23 court the record upon which the order complained of was  
24 entered, as provided in section 2112 of title 28, United  
25 States Code. Upon the filing of such petition such court

1 shall have exclusive jurisdiction to affirm, modify, or set  
2 aside such order, in whole or in part.”

3 SEC. 9. The second sentence of subsection (a) of section  
4 9 of the Securities Act of 1933 (48 Stat. 80) is amended  
5 to read as follows: “A copy of such petition shall be forth-  
6 with transmitted by the clerk of the court to the Commission,  
7 and thereupon the Commission shall file in the court the  
8 record upon which the order complained of was entered, as  
9 provided in section 2112 of title 28, United States Code.”

10 SEC. 10. The second and third sentences of subsection  
11 (a) of section 25 of the Securities Exchange Act of 1934  
12 (48 Stat. 901) are amended to read as follows: “A copy  
13 of such petition shall be forthwith transmitted by the clerk  
14 of the court to any member of the Commission, and there-  
15 upon the Commission shall file in the court the record upon  
16 which the order complained of was entered, as provided in  
17 section 2112 of title 28, United States Code. Upon the  
18 filing of such petition such court shall have exclusive juris-  
19 diction to affirm, modify, and enforce or set aside such order,  
20 in whole or in part.”

21 SEC. 11. The third sentence of subsection (c) of sec-  
22 tion 18 of the Act of June 18, 1934 (48 Stat. 1002), is  
23 amended to read as follows: “The clerk of the court in which  
24 such a petition is filed shall immediately cause a copy thereof  
25 to be delivered to the Board and it shall thereupon file in the



1 court the record in the proceedings held before it under  
2 this section, as provided in section 2112 of title 28, United  
3 States Code.”

4 SEC. 12. The second sentence of subsection (d) of sec-  
5 tion 402 of the Communications Act of 1934, as amended  
6 (66 Stat. 719), is amended to read as follows: “Within  
7 thirty days after the filing of an appeal, the Commission  
8 shall file with the court the record upon which the order  
9 complained of was entered, as provided in section 2112 of  
10 title 28, United States Code.”

11 SEC. 13. (a) Subsection (d) of section 10 of the Na-  
12 tional Labor Relations Act, as amended (61 Stat. 147),  
13 is amended to read as follows:

14 “(d) Until the record in a case shall have been filed in  
15 a court, as hereinafter provided, the Board may at any time  
16 upon reasonable notice and in such manner as it shall deem  
17 proper, modify or set aside, in whole or in part, any finding  
18 or order made or issued by it.”

19 (b) The first, second, fifth and seventh sentences of  
20 subsection (e) of section 10 of the National Labor Relations  
21 Act, as amended (61 Stat. 147), are amended to read as  
22 follows:

23 “(e) The Board shall have power to petition any court  
24 of appeals of the United States, or if all the courts of appeals

1 to which application may be made are in vacation, any dis-  
2 trict court of the United States, within any circuit or dis-  
3 trict, respectively, wherein the unfair labor practice in ques-  
4 tion occurred or wherein such person resides or transacts  
5 business, for the enforcement of such order and for appro-  
6 priate temporary relief or restraining order, and shall file in  
7 the court the record in the proceedings, as provided in  
8 section 2112 of title 28, United States Code. Upon the  
9 filing of such petition, the court shall cause notice thereof  
10 to be served upon such person, and thereupon shall have  
11 jurisdiction of the proceeding and of the question determined  
12 therein, and shall have power to grant such temporary relief  
13 or restraining order as it deems just and proper, and to make  
14 and enter a decree enforcing, modifying, and enforcing as  
15 so modified, or setting aside in whole or in part the order  
16 of the Board. \* \* \* If either party shall apply to the  
17 court for leave to adduce additional evidence and shall show  
18 to the satisfaction of the court that such additional evidence  
19 is material and that there were reasonable grounds for the  
20 failure to adduce such evidence in the hearing before the  
21 Board, its members, agent, or agency, the court may order  
22 such additional evidence to be taken before the Board, its  
23 members, agent, or agency, and to be made a part of the  
24 record. \* \* \* Upon the filing of the record with it the  
25 jurisdiction of the court shall be exclusive and its judgment

1 and decree shall be final, except that the same shall be  
2 subject to review by the appropriate United States court  
3 of appeals if application was made to the district court as  
4 hereinabove provided, and by the Supreme Court of the  
5 United States upon writ of certiorari or certification as pro-  
6 vided in section 1254 of title 28.”

7 (c) The second and third sentences of subsection (f) of  
8 section 10 of the National Labor Relations Act, as amended  
9 (61 Stat. 148), are amended to read as follows: “A copy of  
10 such petition shall be forthwith transmitted by the clerk of  
11 the court to the Board, and thereupon the aggrieved party  
12 shall file in the court the record in the proceeding, certified  
13 by the Board, as provided in section 2112 of title 28, United  
14 States Code. Upon the filing of such petition, the court shall  
15 proceed in the same manner as in the case of an application  
16 by the Board under subsection (e) of this section, and shall  
17 have the same jurisdiction to grant to the Board such tem-  
18 porary relief or restraining order as it deems just and proper,  
19 and in like manner to make and enter a decree enforcing,  
20 modifying, and enforcing as so modified, or setting aside in  
21 whole or in part the order of the Board; the findings of the  
22 Board with respect to questions of fact if supported by sub-  
23 stantial evidence on the record considered as a whole shall in  
24 like manner be conclusive.”

25 SEC. 14. The third and fourth sentences of subsection



1 (h) of section 4 of the Federal Alcohol Administration Act  
2 (49 Stat. 980), as amended, are amended to read as follows:  
3 “A copy of such petition shall be forthwith transmitted by  
4 the clerk of the court to the Secretary, or any officer design-  
5 nated by him for that purpose, and thereupon the Secretary  
6 shall file in the court the record upon which the order com-  
7 plained of was entered, as provided in section 2112 of title  
8 28, United States Code. Upon the filing of such petition  
9 such court shall have exclusive jurisdiction to affirm, modify,  
10 or set aside such order, in whole or in part.”

11 SEC. 15. The second and third sentences of subsection  
12 (a) of section 24 of the Public Utility Holding Company  
13 Act of 1935 (49 Stat. 834), are amended to read as follows:  
14 “A copy of such petition shall be forthwith transmitted by  
15 the clerk of the court to any member of the Commission,  
16 or any officer thereof designated by the Commission for that  
17 purpose, and thereupon the Commission shall file in the  
18 court the record upon which the order complained of was  
19 entered, as provided in section 2112 of title 28, United  
20 States Code. Upon the filing of such petition such court  
21 shall have exclusive jurisdiction to affirm, modify, or set  
22 aside such order, in whole or in part.”

23 SEC. 16. (a) Subsection (a) of section 313 of the  
24 Federal Power Act, as amended (49 Stat. 860), is amended  
25 by inserting at the end thereof an additional sentence read-

1 ing as follows: "Until the record in a proceeding shall have  
2 been filed in a court of appeals, as provided in subsection  
3 (b), the Commission may at any time, upon reasonable  
4 notice and in such manner as it shall deem proper, modify  
5 or set aside, in whole or in part, any find or order made  
6 or issued by it."

7 (b) The second and third sentences of subsection (b)  
8 of section 313 of the Federal Power Act, as amended (49  
9 Stat. 860), are amended to read as follows: "A copy of such  
10 petition shall forthwith be transmitted by the clerk of the  
11 court to any member of the Commission and thereupon the  
12 Commission shall file with the court the record upon which  
13 the order complained of was entered, as provided in section  
14 2112 of title 28, United States Code. Upon the filing of  
15 such petition such court shall have jurisdiction, which upon  
16 the filing of the record with it shall be exclusive, to affirm,  
17 modify, or set aside such order in whole or in part."

18 SEC. 17. The second and third sentences of subsection  
19 (b) of section 611 of the Merchant Marine Act, 1936, as  
20 amended (52 Stat. 961), are amended to read as follows:  
21 "A copy of such petition shall be forthwith transmitted by  
22 the clerk of the court to any member of the Board, or any  
23 officer thereof designated by the Board for that purpose, and  
24 thereupon the Board shall file in the court the record upon

1 which the order complained of was entered, as provided in  
2 section 2112 of title 28, United States Code. Upon the filing  
3 of such petition such court shall have exclusive jurisdiction  
4 to determine whether such cancellation or default was with-  
5 out just cause, and to affirm or set aside such order.”

6 SEC. 18. Subsection (c) of section 1006 of the Civil  
7 Aeronautics Act of 1938 (52 Stat. 1024), is amended to  
8 read as follows:

9 “(c) A copy of the petition shall, upon filing, be forth-  
10 with transmitted to the Board by the clerk of the court;  
11 and the Board shall thereupon file in the court the record,  
12 if any, upon which the order complained of was entered, as  
13 provided in section 2112 of title 28, United States Code.”

14 SEC. 19. (a) Subsection (a) of section 19 of the  
15 Natural Gas Act (52 Stat. 831), is amended by inserting  
16 at the end thereof an additional sentence reading as follows:

17 “Until the record in a proceeding shall have been filed in  
18 a court of appeals, as provided in subsection (b), the Com-  
19 mission may at any time, upon reasonable notice and in  
20 such manner as it shall deem proper, modify or set aside,  
21 in whole or in part, any finding or order made or issued  
22 by it.”

23 (b) The second and third sentences of subsection (b)  
24 of section 19 of the Natural Gas Act (52 Stat. 831), are  
25 amended to read as follows: “A copy of such petition shall



1 forthwith be transmitted by the clerk of the court to any  
2 member of the Commission and thereupon the Commission  
3 shall file with the court the record upon which the order  
4 complained of was entered, as provided in section 2112 of  
5 title 28, United States Code. Upon the filing of such peti-  
6 tion such court shall have jurisdiction, which upon the filing  
7 of the record with it shall be exclusive, to affirm, modify,  
8 or set aside such order in whole or in part.”

9 SEC. 20. (a) The first and second sentences of para-  
10 graph (2) of subsection (i) of section 408 of the Federal  
11 Food, Drug, and Cosmetic Act, as added by the Act of  
12 July 22, 1954 (ch. 559, 68 Stat. 515), are amended to  
13 read as follows:

14 “(2) In the case of a petition with respect to an  
15 order under subsection (d) (5) or (e), a copy of the  
16 petition shall be forthwith transmitted by the clerk of the  
17 court to the Secretary, or any officer designated by him  
18 for that purpose, and thereupon the Secretary shall file in  
19 the record of the proceedings on which he based his order,  
20 as provided in section 2112 of title 28, United States Code.  
21 Upon the filing of such petition, the court shall have exclu-  
22 sive jurisdiction to affirm or set aside the order complained  
23 of in whole or in part.”

24 (b) The first and second sentences of paragraph (3)  
25 of subsection (i) of section 408 of the Federal Food, Drug,

1 and Cosmetic Act, as added by the Act of July 22, 1954  
2 (ch. 559, 68 Stat. 515), are amended to read as follows:

3 “(3) In the case of a petition with respect to an order  
4 under subsection (1), a copy of the petition shall be forth-  
5 with transmitted by the clerk of the court to the Secretary  
6 of Agriculture, or any officer designated by him for that  
7 purpose, and thereupon the Secretary shall file in the court  
8 the record of the proceedings on which he based his order,  
9 as provided in section 2112 of title 28, United States Code.  
10 Upon the filing of such petition, the court shall have ex-  
11 clusive jurisdiction to affirm or set aside the order com-  
12 plained of in whole or in part.”

13 SEC. 21. The third sentence of paragraph (1) of sub-  
14 section (f) of section 701 of the Federal Food, Drug, and  
15 Cosmetic Act (52 Stat. 1055), as amended, is amended to  
16 read as follows: “The Secretary thereupon shall file in the  
17 court the record of the proceedings on which the Secretary  
18 based his order, as provided in section 2112 of title 28,  
19 United States Code.”

20 SEC. 22. The second and third sentences of subsection  
21 (a) of section 10 of the Fair Labor Standards Act of 1938  
22 (52 Stat. 1065), as amended, are amended to read as fol-  
23 lows: “A copy of such petition shall forthwith be transmit-  
24 ted by the clerk of the court to the Secretary, and thereupon  
25 the Secretary shall file in the court the record of the indus-

1 try committee upon which the order complained of was en-  
2 tered, as provided in section 2112 of title 28, United States  
3 Code. Upon the filing of such petition such court shall  
4 have exclusive jurisdiction to affirm, modify, or set aside  
5 such order in whole or in part, so far as it is applicable to  
6 the petitioner.”

7 SEC. 23. The fourth, fifth, sixth, and eighth sentences of  
8 subsection (f) of section 5 of the Railroad Unemployment  
9 Insurance Act, as amended (52 Stat. 1100), are amended  
10 to read as follows: “Within fifteen days after receipt of  
11 service, or within such additional time as the court may al-  
12 low, the Board shall file with the court in which such peti-  
13 tion has been filed the record upon which the findings and  
14 decision complained of are based, as provided in section 2112  
15 of title 28, United States Code. Upon the filing of such  
16 petition the court shall have exclusive jurisdiction of the  
17 proceeding and of the question determined therein, and shall  
18 give precedence in the adjudication thereof over all other  
19 civil cases not otherwise entitled by law to precedence. It  
20 shall have power to enter a decree affirming, modifying, or  
21 reversing the decision of the Board, with or without remand-  
22 ing the cause for rehearing. \* \* \* No additional evidence  
23 shall be received by the court, but the court may order  
24 additional evidence to be taken before the Board, and the  
25 Board may, after hearing such additional evidence, modify



1 its findings of fact and conclusions and file such additional or  
2 modified findings and conclusions with the court, and the  
3 Board shall file with the court the additional record.”

4 SEC. 24. (a) Subsection (c) of section 409 of the Fed-  
5 eral Seed Act (53 Stat. 1287), is amended to read as  
6 follows:

7 “(c) Until the record in such hearing has been filed in  
8 a court of appeals as provided in section 410, the Secretary  
9 of Agriculture at any time, upon such notice and in such  
10 manner as he deems proper, but only after reasonable oppor-  
11 tunity to the person to be heard, may amend or set aside the  
12 report or order, in whole or in a part.”

13 (b) The second and third paragraphs of section 410 of  
14 the Federal Seed Act (53 Stat. 1288), are amended to read  
15 as follows:

16 “The clerk of the court shall immediately cause a copy  
17 of the petition to be delivered to the Secretary, and the Sec-  
18 retary shall thereupon file in the court the record in such  
19 proceedings, as provided in section 2112 of title 28, United  
20 States Code. If before such record is filed, the Secretary  
21 amends or sets aside his report or order, in whole or in part,  
22 the petitioner may amend the petition within such time as  
23 the court may determine, on notice to the Secretary.

24 “At any time after such petition is filed the court, on  
25 application of the Secretary, may issue a temporary injunc-

tion restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal.”

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

“SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued.”

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: “A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the

1 court the record upon which the order complained of was  
2 entered, as provided in section 2112 of title 28, United  
3 States Code. Upon the filing of such petition such court  
4 shall have exclusive jurisdiction to affirm, modify, or set aside  
5 such order, in whole or in part.”

6 SEC. 26. The second and third sentences of subsection  
7 (a) of section 213 of the Investment Advisers Act of 1940,  
8 as amended (54 Stat. 855), are amended to read as follows:  
9 “A copy of such petition shall be forthwith transmitted by  
10 the clerk of the court to any member of the Commission, or  
11 any officer thereof designated by the Commission for that  
12 purpose, and thereupon the Commission shall file in the court  
13 the record upon which the order complained of was entered,  
14 as provided in section 2112 of title 28, United States Code.  
15 Upon the filing of such petition such court shall have ex-  
16 clusive jurisdiction to affirm, modify, or set aside such order,  
17 in whole or in part.”

18 SEC. 27. (a) The third sentence of paragraph (1) of  
19 subsection (b) of section 632 of the Act of July 1, 1944,  
20 as added by the Hospital Survey and Construction Act (60  
21 Stat. 1048), is amended to read as follows: “The Surgeon  
22 General shall thereupon file in the court the record of the  
23 proceedings on which he based his action, as provided in  
24 section 2112 of title 28, United States Code.”

25 (b) The first sentence of paragraph (2) of subsection



1 (b) of section 632 of the Act of July 1, 1944, as added by  
2 the Hospital Survey and Construction Act (60 Stat. 1048),  
3 is amended to read as follows:

4 “(2) The findings of fact by the Surgeon General, un-  
5 less substantially contrary to the weight of the evidence, shall  
6 be conclusive; but the court, for good cause shown, may re-  
7 mand the case to the Surgeon General to take further evi-  
8 dence, and the Surgeon General may thereupon make new or  
9 modified findings of fact and may modify his previous action,  
10 and shall file in the court the record of the further pro-  
11 ceedings.”

12 SEC. 28. The fourth sentence of subsection (c) of sec-  
13 tion 205 of the Sugar Act of 1948 (61 Stat. 927), is  
14 amended to read as follows: “Within thirty days after the  
15 filing of said appeal the Secretary shall file with the court  
16 the record upon which the decision complained of was  
17 entered, as provided in section 2112 of title 28, United  
18 States Code, and a list of all interested persons to whom  
19 he has mailed or otherwise delivered a copy of said notice  
20 of appeal.”.

21 SEC. 29. The second and third sentences of subsection  
22 (a) of section 14 of the Internal Security Act of 1950 (64  
23 Stat. 1001), are amended to read as follows: “A copy of  
24 such petition shall be forthwith transmitted by the clerk of  
25 the court to the Board, and thereupon the Board shall file

1 in the court the record in the proceeding, as provided in  
2 section 2112 of title 28, United States Code. Upon the  
3 filing of such petition the court shall have jurisdiction of the  
4 proceeding and shall have power to affirm or set aside the  
5 order of the Board; but the court may in its discretion and  
6 upon its own motion transfer any action so commenced to  
7 the United States Court of Appeals for the circuit wherein  
8 the petitioner resides.”.

9 SEC. 30. (a) Subsection (e) of section 110 of the  
10 Internal Security Act of 1950 (64 Stat. 1028), is amended  
11 to read as follows:

12 “(e) Until the record in a case shall have been filed  
13 in a court, as hereinafter provided, the Board may at any  
14 time, upon reasonable notice and in such manner as it  
15 shall deem proper, modify or set aside, in whole or in  
16 part, any finding or order made or issued by it.”

17 (b) The third and fifth sentences of subsection (c) of  
18 section 111 of the Internal Security Act of 1950 (64 Stat.  
19 1028), are amended to read as follows: “The Board shall  
20 thereupon file in the court the record of the proceedings  
21 before the Board with respect to the matter concerning which  
22 judicial review is sought, as provided in section 2112 of  
23 title 28, United States Code \* \* \* Upon the filing of such  
24 petition the court shall have jurisdiction of the proceeding,  
25 which upon the filing of the record with it shall be exclusive,

1 and shall have power to affirm, modify, or set aside, or to  
2 enforce or enforce as modified the order of the Board.”.

3 (c) The first sentence of subsection (d) of section 111  
4 of the Internal Security Act of 1950 (60 Stat. 1029), is  
5 amended to read as follows:

6 “(d) If either party shall apply to the court for leave  
7 to adduce additional evidence and shall show to the satis-  
8 faction of the court that such additional evidence is material  
9 and that there were reasonable grounds for the failure to  
10 adduce such evidence in the hearing before the Board or  
11 its hearing examiner, the court may order such additional  
12 evidence to be taken before the Board or its hearing examiner  
13 and to be made a part of the record.”

14 SEC. 31. (a) Section 6 of the Act of December 29,  
15 1950 (64 Stat. 1130), is amended to read as follows:

16 “SEC. 6. Unless the proceeding has been terminated  
17 on a motion to dismiss the petition, the agency shall file in  
18 the office of the clerk of the court of appeals in which the  
19 proceeding is pending the record on review, as provided in  
20 section 2112 of title 28, United States Code.”

21 (b) The second sentence of subsection (c) of section 7  
22 of the Act of December 29, 1950 (64 Stat. 1131), is  
23 amended to read as follows: “The agency may modify its  
24 findings of fact, or make new findings, by reason of the  
25 additional evidence so taken and may modify or set aside



1 its order and shall file in the court such additional evidence,  
2 such modified findings or new findings, and such modified  
3 order or the order setting aside the original order.”.

4 SEC. 32. The second and third sentences of subsection  
5 (b) of section 208 of the Federal Coal Mine Safety Act,  
6 as amended (66 Stat. 702), are amended to read as follows:  
7 “Upon receipt of such copy of a notice of appeal the Board  
8 shall file in such court the record upon which the order com-  
9 plained of was made, as provided in section 2112 of title 28,  
10 United States Code. The costs of certifying and filing such  
11 record shall be paid by the party making such appeal.”.

12 SEC. 33. The fifth and sixth sentences of subsection  
13 (b) of section 207 of the International Claims Settlement  
14 Act of 1949, as amended (69 Stat. 564), are amended to  
15 read as follows: “Such petition for review must be filed  
16 within sixty days after the date of mailing of the final order  
17 of denial by said designee and a copy shall forthwith be  
18 transmitted to the said designee by the clerk of the court.  
19 Within forty-five days after receipt of such petition for  
20 review, or within such further time as the court may grant for  
21 good cause shown, said designee shall file an answer thereto,  
22 and shall file with the court the record of the proceedings  
23 with respect to such claim, as provided in section 2112 of  
24 title 28, United States Code.”

25 SEC. 34. The second and third sentences of section 9

1 of the Bank Holding Company Act of 1956 (70 Stat. 138)  
2 are amended to read as follows: “A copy of such petition  
3 shall be forthwith transmitted to the Board by the clerk  
4 of the court, and thereupon the Board shall file in the court  
5 the record made before the Board, as provided in section  
6 2112 of title 28, United States Code. Upon the filing of  
7 such petition the court shall have jurisdiction to affirm, set  
8 aside, or modify the order of the Board and to require the  
9 Board to take such action with regard to the matter under  
10 review as the court deems proper.”

11 SEC. 35. This Act shall not be construed to repeal or  
12 modify any provision of the Administrative Procedure Act.







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## A BILL

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To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

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By Mr. Celler

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APRIL 10, 1957

Referred to the Committee on the Judiciary







June 27, 1957

HOUSE

17. APPROPRIATIONS. Received the conference report on H.R. 5189, the Interior appropriation bill for 1958, which includes Forest Service items (H. Rept. 653). (pp. 9440-42, 9494). See table at the end of this Digest for information regarding Forest Service items.  
A request by Rep. Kirwan for permission to file a conference report on H.R. 7441, the agricultural appropriation bill, by midnight, Thurs., June 27, was withdrawn at the request of Rep. Harrison, Va. (p. 9442). It is understood that the report of the conferees will not be filed for approximately a week.
18. PEANUTS. The Agriculture Committee reported with amendment H.R. 6570, to amend the Agricultural Adjustment Act of 1938 so as to remove green peanuts from the marketing penalty provisions (H. Rept. 649).
19. ORGANIZATION. The Government Operations Committee reported with amendment H.R. 8364, to amend the Reorganization Act of 1949 so as to make the Act applicable to reorganization plans transmitted to Congress at any time before June 1, 1959 (H. Rept. 657). p. 9494
20. HOUSING. Received the conference report on H.R. 6659, the housing bill for 1957 (H. Rept. 659). (pp. 9442, 9487-93, 9494) Authorizes grants by the Housing and Home Finance Administrator to the land-grant colleges for farm housing research of not to exceed \$300,000 for each of the years 1958 and 1959 as proposed by the House, instead of \$200,000 for each of these years as proposed by the Senate.
21. ADMINISTRATIVE ORDERS. A subcommittee of the Judiciary Committee ordered reported with amendment H.R. 6788, to authorize the abbreviation of the record on the review of enforcement of orders of administrative agencies by the courts of appeals. p. D589
22. ACCOUNTING. The Government Operations Committee/ordered reported H.R. 8195, to facilitate the payment of Government checks. p. D589
23. SURPLUS DISPOSAL. Received from this Department a progress report on the orderly liquidation of stocks of agricultural commodities held by CCC, reflecting estimated activity under the various disposal programs, programs of disposition, and estimated remaining inventory as of June 30, 1958. pp. 9493-94
24. FORESTRY. Both Houses received from this Department and the Department of the Army a notice of intention of the two Departments to interchange jurisdiction of certain military and national forest lands, pursuant to Public Law 804, 84th Congress. pp. 9358, 9494  
Received a Wisc. Legislature memorial favoring legislation to restrict the importation of plywood. p. 9495
25. PERSONNEL. Passed as reported H.R. 6523, to amend the Federal Employees' Compensation Act to provide compensation for employees of the U.S. suffering injuries from war-risk hazards or during detention by a hostile force or person. p. 9447  
Rep. Lane spoke on the need for a program to decrease the shortage of scientists, engineers, and technicians. pp. 9464-65

Received from the Commerce Department a proposed bill to authorize the establishment of 88 positions for specially qualified scientific and professional personnel in Commerce at rates of compensation not to exceed the maximum rate payable under Public Law 313, 80th Congress; to Post Office and Civil Service Committee. p. 9494

26. POSTAL SERVICE. Received from the Postmaster General a cost ascertainment report for the 1956 fiscal year. p. 9494
27. LEGISLATIVE PROGRAM. Rep. McCormack announced that the Interior appropriation bill will probably be considered today, June 28. p. 9465

#### ITSMS IN APPENDIX

28. CONSERVATION. Rep. McGovern inserted an editorial which details the efforts of a S. Dak. farmer in the field of conservation farming. p. A5151
29. WATER RESOURCES. Rep. Brooks inserted a speech delivered before the Nat'l Rivers and Harbors Congress, "Water Resources and the Tidelands Area." pp. A5153-4
30. INFORMATION; CORN. Rep. Curtis, Mo., inserted a letter from the executive editor of the Congressional Quarterly news features in defense of certain charges made against the Quarterly's method of reporting rollcall votes, including the votes on the corn bills. pp. A5181-3
31. CORN. Rep. Coad inserted an article, "Grow Corn for Plastics," which points to another specific use of agricultural products for industrial purposes. pp. A5161-2
- Rep. Knutson stated that the corn tassel, perhaps better than any other symbol, would be a fitting emblem for our country, and inserted articles and a letter on this subject. pp. A5166-7
32. REORGANIZATION. Rep. Cretella inserted a group message on the Hoover Commission Reports prepared by a group of private citizens outlining certain objectives. pp. A5169-70
33. INSECTICIDES. Rep. Reuss stated that lovers of wildlife the country over are deeply concerned over the effects of chemical sprays for trees and other vegetation on fish and wildlife and inserted articles by conservationists on this subject. p. A5174
34. 4-H CLUBS. Rep. Ikard inserted an award winning speech by a 4-H Club Member describing some of the accomplishments of club members. pp. A5175-6

#### BILLS INTRODUCED

35. DAIRY PRODUCTS. S. 2408, by Sen. Thye, to authorize a special milk program, a veterans and Armed Forces dairy products program, and an accelerated brucellosis eradication program; to Agriculture and Forestry Committee.
36. RECREATION. S. 2409, by Sen. Neuberger, to establish a Federal Recreation Service in the Department of Health, Education and Welfare; to Labor and Public Welfare Committee. Remarks of author. pp. 9359-60







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

Issued July 17, 1957  
For actions of July 16, 1957  
85th-1st, No. 125

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HIGHLIGHTS: House debated mutual security authorization bill. House committee reported bill to permit use of soil bank acreage in establishing future acreage allotments. Senate received USDA feed grains report. Sen. Fulbright announced postponement of hearings on bill to increase interest rates on certain Government loans.

## HOUSE

1. FOREIGN AID. Continued debate on S. 2130, the mutual security authorization bill. pp. 10713-66
2. ACREAGE ALLOTMENTS. The Agriculture Committee reported without amendment H.R. 8030, to amend the Agricultural Adjustment Act of 1938 so as to provide that acreage placed in the soil bank shall be counted as a part of total acreage for purposes of establishing future acreage allotments for a farm (H. Rept. 817). p. 10771
3. FORESTRY. Conferees were appointed on S. 469, to authorize the U.S. to defray the cost of assisting the Klamath Indians to prepare for termination of Federal supervision, and to defer sales of tribal property, including timberlands. (p. 10703) Senate conferees were appointed June 24.
4. ADMINISTRATIVE ORDERS. The Judiciary Committee ordered reported with amendment H.R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders. p. D658



5. GRANTS-IN-AID. Rep. Pelly urged the passage of legislation authorizing a study of Federal grants-in-aid. pp. 10766-67

SENATE

6. FEED GRAINS. Received from this Department a report on the study of possible methods of improving the feed grain program. p. 10642
7. LOANS. Sen. Fulbright announced the postponement of the Banking and Currency Committee hearings on S. 2427, to improve the coordination between the loan programs and fiscal and credit policies of the Federal Government, until the next session of Congress, and inserted correspondence with the Budget Bureau on the effects of the bill, including an increase from 2% to 3 5/8% for REA loans from the Treasury and from 3% to 3 3/4% for FHA loans, and an increase to the same rates as the minimum for new borrowers. pp. 10652-3
8. TOBACCO. Sen. Cooper urged the Senate to wait for more studies on whether cancer was caused by cigarette smoking before enacting bills to require warning labels on cigarette packages, and inserted statements by a scientist and men in the tobacco industry commenting on the Surgeon General's statement. pp. 10658-61
9. DISASTER RELIEF. Sen. Yarborough inserted a report from the Small Business Administration relative to the disasters in Texas this spring. pp. 10664-5
10. INTEREST RATES. Sen. Bush inserted tables showing interest rates abroad and a statement on the monetary restraints imposed by European nations in order to check inflation. pp. 10640-1
11. WEATHER-CONTROL RESEARCH. In reporting S. 86 (See Digest 121) to provide for research in cloud modification, the Committee amended the bill so as to (1) give the National Science Foundation overall authority over the program through grants to, or contracts with, public or private institutions or agencies and (2) enlarge the scope of the program so as to include the phases of weather modification such as suppression or diminishing of hail, lightning, fog, smog, tornadoes, and other weather phenomena.
12. PUBLIC WORKS APPROPRIATION BILL, 1958. The Senate report on this bill, H.R. 8090, dated July 12, includes statements as follows:
- Water resource development. "The program of water resource development has not had a green light for almost two decades. In fact, except for the navigation phase of this program, its entire existence has been marked with one emergency after another...
- "During the previous 2 years this committee recommended a number of new starts on urgently needed and long-deferred projects. The day is here when this country needs an accelerated program of soil and water conservation due to a succession of emergencies. The program for conservation of our natural resources has lagged far behind the general economic development of this Nation. The committee has therefore recommended a few new starts on projects in each of the major fields of resource development covered in this bill. The relationship of these programs to our economy are discussed in the following paragraphs."
- Water Supply. "The River and Harbor bill, S. 497, as passed by the Senate includes provision for a more realistic approach to the repayment by local interests for the cost of water supply features of multi-purpose reservoirs. For a number of years this committee has discussed in its reports the







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

Issued July 24, 1957  
For actions of July 23, 1957  
85th-1st No. 130

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HIGHLIGHTS: Sen. Hruska urged additional research on industrial uses of farm products. Rep. Marshall introduced and discussed bill to provide incentive payments for marketing lightweight hogs.

## HOUSE

1. APPROPRIATIONS. Received the conference report on H. R. 7665, the Defense Department appropriation bill for 1958 (H. Rept. 841). pp. 11287-9
2. ADMINISTRATIVE ORDERS. The Judiciary Committee reported with amendment H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers, and to make uniform the law relating to the record on review or enforcement of such orders (H. Rept. 842). p. 11325
3. ELECTRIFICATION. The Public Works Committee reported without amendment H. R. 8643, to authorize the construction of certain works of improvement in the Niagara River for power (H. Rept. 862). p. 11325
4. ROADS; PERSONNEL. A subcommittee of the Public Works Committee ordered reported S. 1941, to authorize the payment by the Bureau of Public Roads of transportation and subsistence costs to temporary employees on direct Federal highway projects. p. D684

5. COMMITTEE ASSIGNMENTS. Rep. Boyle, Ill., resigned from the Judiciary Committee and was elected a member of the Appropriations Committee. p. 11319

SENATE

6. INDUSTRIAL USES. Sen. Hruska urged that an expanded program for research on industrial uses of agricultural products be undertaken immediately, and inserted a favorable editorial. pp. 11237-8
7. DISASTER RELIEF. Sen. Bush urged disaster relief for dairy farmers and others faced with destruction of their hay crop because of the drought. p. 11243
8. FARM PROGRAM. Sen. Humphrey inserted two letters to the editor criticizing the present farm program and urging aid for family farms. pp. 11250-1
9. GRAIN. Sen. Humphrey inserted correspondence with grain merchants opposing the change from bushels to hundredweights in grain-handling procedures. pp. 11251-2
10. LANDS. The Public Lands subcommittee ordered reported to the full Interior and Insular Affairs Committee with amendments H.R. 5538, to provide that withdrawals and restrictions of more than 5,000 acres of public lands shall be ineffective until approved by Congress. p. D682
11. FOREST ROADS. Sen. Neuberger urged development of more forest access roads, and inserted an article by Sen. Magnuson, and his correspondence with Sen. Chavez, supporting S. 1136, to increase the authorization for Federal construction of timber access roads. pp. 11225-6
12. TOBACCO. Sen. Neuberger inserted two articles on cigarettes and public health education about tobacco. pp. 11227-9
13. INTEREST RATES. Sens. Gore, Johnston, and Wiley discussed the latest interest rate increase and its effect on the economy and standard of living. p. 11233

ITEMS IN APPENDIX

14. PARITY. Sen. Sparkman inserted an editorial, "Let's Keep the Parity Principle," which states that "Secretary Benson has not proved that the parity principle has failed. He has simply proved that there has been too much looseness in enforcing or carrying out the parity principle." pp. A5922-3
15. TOBACCO. Sen. Neuberger inserted an editorial, "Do You Want to Support Tobacco?" and stated that this points out "compelling arguments for removing tobacco from the list of basic crops eligible for Federal financial assistance." p. A5924
16. INFLATION. Rep. Ray stated the specter of inflation is becoming increasingly real and important in the minds of rapidly growing numbers of people and inserted an article on this subject. p. A5928  
Rep. Hiestand stated the basic cause of inflation is Government spending, but that we cannot lick spending unless the people of the U. S. are back of us. p. A5931
17. PUBLIC WORKS. Various speeches, discussions and insertions on the omnibus public works bill now pending. pp. A5915, A5928, A5933, A5936-7, A5942
18. COTTON. Rep. Rogers, Mass, inserted a letter and fact sheet from the Textile Workers Union of America dealing with the problem of raw cotton and discussing the position the Union takes on legislation on cotton marketing now pending in the Congress. pp. A5929-30



AUTHORIZING ABBREVIATED RECORDS IN REVIEWING  
ADMINISTRATIVE AGENCY PROCEEDINGS

JULY 23, 1957.—Ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 6788]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

No. 1. Page 2, line 8, strike out "rules" and insert "rules, which so far as practicable shall be uniform in all such courts".

Page 2, line 12, strike out "in which" and insert "to the extent that".

No. 2. Page 2, line 20, after "proceeding", change the period to a comma and add:

and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court.

No. 3. Page 2, line 21, after "for", add "and transmitted to".

No. 4. Page 3, line 2, after "which", strike out "in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" and insert "a proceeding with respect to such order was first instituted".

No. 5. Page 3, line 6, after "filed.", add—

For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.



No. 6. Page 4, line 11, strike "necessary" and insert "proper".

No. 7. Page 4, line 15, strike "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the" and insert "The".

No. 8. Page 4, line 19, after "subsection" insert "and if so requested by the petitioner for review or respondent in enforcement shall,".

No. 9. Page 5, line 13, at the end of the line strike "proceedings" and insert "or enforcement proceedings."

No. 10. Page 5, between lines 13 and 14, insert a new subsection:

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

No. 11. Page 6, line 10, after "therein", insert "concurrently with the Commission until the filing of the record,".

No. 12. Page 7, line 21, after "therein", strike the comma and insert "concurrently with the Commission or Board until the filing of the record,".

No. 13. Page 9, line 16, after "Subsections", strike "(b) and (c)" and insert "(b), (c), and (d)".

No. 14. Page 10, between lines 8 and 9, insert a new subsection:

(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way..

No. 15. Page 10, line 20, strike "third sentence" and insert "third and fourth sentences."

No. 16. Page 10, line 21, strike out "is" and insert "are".

No. 17. Page 11, line 3, after "Code.", add—

The testimony and evidence taken or submitted before the said Commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

No. 18. Page 12, lines 18 and 19, strike "exclusive jurisdiction," and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 19. Page 14, line 21, strike "members" and insert "member".

No. 20. Page 14, line 23, strike "members" and insert "member".

No. 21. Page 16, line 21, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 22. Page 17, line 5, strike "find" and insert "finding".

No. 23. Page 17, line 6, after "it", strike the period and insert "under the provisions of this Act..".

No. 24. Page 17, line 22, strike "Board" and insert "Commission".

No. 25. Page 17, line 23, strike "Board" and insert "Commission".

No. 26. Page 17, line 24, strike "Board" and insert "Commission".

No. 27. Page 18, line 22, after "it", strike the period and insert "under the provisions of this Act..".

No. 28. Page 19, line 18, after "in", insert "the court".

No. 29. Page 20, line 13, strike "The third sentence" and insert "(a) The second and third sentences".

No. 30. Page 20, line 15, strike "is" and insert "are".

No. 31. Page 20, line 16, after "follows:", insert—

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.

Page 20, between lines 19 and 20 insert the following paragraph:

(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently."

No. 32. Page 22, line 13, after "The" strike "second and third" and insert "second, third and fourth".

No. 33. Page 23, between lines 4 and 5, insert a new paragraph as follows:

The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

No. 34. Page 24, line 4, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 35. Page 24, line 15 and 16, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

No. 36. Page 24, line 18, after "(a)" strike "The third sentence of paragraph" and insert "Paragraph".

No. 37. Page 24, line 21, after the colon insert the following subsection:

(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose.

No. 38. Page 28, line 4, strike out all of section 32 and insert in lieu thereof:

Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974), is amended by adding at the end of that subsection three additional sentences reading as follows: "The local educational agency affected may file with the court a petition to review such action. A copy of the

petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part."

No. 39. Page 20, line 4, strike the figure "(1)" and insert the letter "(l)".

No. 40. Page 22, line 12, strike "a" immediately before "part".

No. 41. Page 26, line 23, insert a period immediately after "Code".

#### EXPLANATION OF AMENDMENTS

*Amendment No. 1.*—Several of the Federal agencies and the American Bar Association propose that the bill be amended to require the adoption of *uniform* rules. While uniformity is highly desirable, there will be special conditions in particular circuits which will not obtain generally. This amendment seeks substantial uniformity by requiring the approval of the Judicial Conference to rules promulgated by the various courts of appeals while at the same time permitting individual courts to make special provision required by peculiar local conditions.

The latter part of this amendment makes it clear that the rules to be adopted by the courts of appeals may cover the matters of time of filing, manner of filing, and contents of the record *to the full extent* that such matters or any of them are not specifically covered by applicable statutes.

*Amendment No. 2.*—Subsection (a) of new section 2112 has been expanded in accordance with suggestions made at the hearing on May 17, 1956, to provide that the rules of court may authorize the agency concerned, to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This procedure has been recently tried in several of the courts and found feasible. In carrying out this provision the instant amendment was inserted to provide that the filing of a certified list of materials will be deemed full compliance with any provision of law requiring the filing of the record.

*Amendment No. 3.*—This amendment was made in the interest of precision to implement the provisions of amendment No. 2.

*Amendments Nos. 4 and 5.*—The bill, as introduced, provided that if proceedings have been instituted in two or more courts with respect to the same order, the agency would be required to file the record in that court which in its judgment would be most convenient to the parties, and the other courts were then to transfer their proceedings to it. This was intended to provide statutory authority for the procedure developed by the courts in this situation. See *Columbia Oil and Gas Co. v. Securities and Exchange Commission* (3d Cir. 1943, 134 F. 2d 265); *L. J. Marquis & Co. v. Securities & Exch. Com.* (2 Cir. 1943, 134 F. 2d 335); *L. J. Marquis & Co. v. Securities & Exchange Com.* (3 Cir. 1943, 134 F. 2d 822). This provision would have provided a general rule applicable to all agency review cases. The use of the phrase "in its judgment" was intended to make clear that the choice of forum in such a case was in the discretion of the agency and was not to be reviewable except for clear abuse of discretion. How-



ever, the American Bar Association and several of the agencies found fault with the provision and recommended that the court of appeals—and not a Federal agency—in which the first proceeding was instituted, should have exclusive jurisdiction of all proceedings involving the same order with authority to transfer all the proceedings to another court of appeals if that would best serve the convenience of the parties. The committee has adopted this suggestion, and the instant amendments carry out this recommendation.

*Amendment No. 6.*—It was suggested that additional portions of the record ought to be ordered filed when the court thinks it “proper.” It need not be shown to be “necessary” before the court may do so. Accordingly, this amendment was adopted to carry out the suggestion.

*Amendment No. 7.*—Following the introduction of the bill, it developed that as a result of recent rule changes, no court of appeals now requires the entire record to be printed. This limitation rendered the provision affected by this amendment unnecessary.

*Amendment No. 8.*—The American Bar Association suggested that the petitioner for review and the respondent in enforcement proceedings should have the option to require the entire proceeding to be filed in the court. Since subsection (b) of new section 2112 includes a provision giving the agencies the right, at their option, to file the entire record in the courts, it was deemed proper that petitioners and respondents, at their option, should also have the same right, and this amendment so provides.

*Amendment No. 9.*—This amendment makes a technical change in the bill.

*Amendment No. 10.*—This amendment was adopted to make clear that the bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of agency orders which are by law reviewable by the district courts and not, in the first instance, by the several courts of appeals.

*Amendments Nos. 11 and 12.*—These amendments remove any possible ambiguity as to the right of the Federal Trade Commission to modify or revoke an order under review prior to the filing of the record. At the same time, the amendments do not interfere with the basic scheme of the bill to make clear in all cases that jurisdiction attaches in the court of appeals for the purpose of making interlocutory and procedural orders from the time of the filing of the petition for review.

*Amendments Nos. 13, 14, 15, 16, and 17.*—These are clarifying amendments, and were suggested by the Department of Agriculture.

*Amendment No. 18.*—This amendment was adopted at the suggestion of the Securities and Exchange Commission to make clear that that Commission has concurrent jurisdiction with the court of appeals to modify, amend, or revoke its own order between the time the petition for review is filed and the time the record is filed. This permits the Commission to carry out the provisions of the Securities and Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. It was pointed out at the hearing that, in these cases, there is no advantage to be gained by conferring exclusive jurisdiction on the court of appeals before the record is filed in that court. In fact, in some instances, such a procedure might have the effect of depriving a party of the right of a rehearing before the Com-

mission and might be construed to deny the Commission the power to stay its own orders after the filing of a petition for review.

*Amendments Nos. 19 and 20.*—These amendments correct typographical errors.

*Amendment No. 21.*—See explanation of amendment No. 18 above.

*Amendment No. 22.*—This amendment corrects typographical error.

*Amendment No. 23.*—This is a clarifying amendment.

*Amendments Nos. 24, 25, and 26.*—These amendments are needed to indicate that the definition of "commission" includes both the Federal Maritime Board and the Department of Commerce, as set out in section 905 (c) of the Merchant Marine Act of 1936, as amended.

*Amendment No. 27.*—This is a clarifying amendment.

*Amendment No. 28.*—This is a technical amendment.

*Amendments Nos. 29, 30, and 31* are procedural amendments.

*Amendments Nos. 32 and 33.*—These are clarifying amendments suggested by the Department of Agriculture.

*Amendments Nos. 34 and 35.*—See explanation of amendment No. 18 above.

*Amendments Nos. 36 and 37.*—These amendments give the courts of appeals jurisdiction upon the filing of the notice of appeal.

*Amendment No. 38.*—Section 32 of the bill as introduced is deleted by this amendment. The Federal Coal Mine Safety Board of Review pointed out that the procedure upon review of the orders of that Board is not analogous to other review proceedings covered by the bill. The Board's proceedings are purely advisory between parties before the Board and the Board itself is not a party to the review proceeding. After the committee had decided to eliminate these provisions from section 32 of the bill, it further decided, at the suggestion of the Department of Health, Education, and Welfare, to add a provision to amplify section 207 (b) of the act of September 23, 1950, to bring that law in harmony with the other provisions of the bill affecting the Department of Health, Education, and Welfare. This provision now forms section 32.

*Amendments Nos. 39, 40, and 41.*—These amendments correct typographical errors.

#### PURPOSE

The purpose of the bill is to permit the several courts of appeals to adopt rules authorizing the abbreviation of the transcript and other parts of the record made before Federal administrative agencies when the orders of those agencies are to be reviewed by the courts of appeals.

In many instances much of the record made before such agencies is not relevant to the questions actually raised on appeal. This legislation, in permitting an abbreviated record to be transmitted, should result in a substantial saving of time and money without interfering with any of the appellate rights which persons now have under existing law.

#### BACKGROUND

In 1953 the Judicial Conference of the United States referred to its Committee on Revision of the Laws a proposal that existing statutes be amended so as to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary. The proposal also provided for the authorization of the use of the original papers

in appropriate cases in lieu of a transcript, the papers to be returned to the administrative agency upon the completion of the review proceedings. The Judicial Conference committee concluded that the proposal had substantial merit.

An examination of the Federal statutes authorizing judicial review of orders of administrative agencies by that committee disclosed that many of them now specifically require a transcript of the *entire* record to be filed by the agency in the court of appeals. It was thought that these requirements should be eliminated except in those instances where for some other reason it is necessary to file the entire record.

This objective could, perhaps, have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. But this would have left the law in confusion as to what specific provisions would have been thus repealed by implication. The Judicial Conference committee became satisfied that in order to deal comprehensively with the problem it would be necessary to amend many of the existing statutes.

In addition it seemed advisable to that committee to add a new section 2112 to title 28 of the United States Code which would confer rulemaking power in this field upon the courts of appeals with the approval of the Judicial Conference. Such a statute should, the committee thought, be modeled upon section 6 of the Hobbs Act of December 29, 1950 (5 U. S. C. 1036), which provides for uniform rules promulgated by the courts of appeals with the approval of the Judicial Conference.

The Committee on Revision of the Laws of the Judicial Conference accordingly prepared a tentative draft of such an amendatory statute and submitted it to all the judges of the courts of appeals and to all the agencies involved for their study and suggestions.

It received a large number of constructive suggestions which it embodied in the revision of the bill which was introduced in the 84th Congress as H. R. 6682, and which was the subject of a hearing before Subcommittee No. 3 of the House Committee on the Judiciary on May 17, 1956. Thereafter a further document was compiled made up of hearings, Government agency reports, and other comments (hearings, Serial No. 25, House Committee on the Judiciary, 84th Cong.), and was made available to all interested organizations so that their views could be obtained on the proposed legislation.

When the legislation (H. R. 6788) was introduced in this Congress, further hearings were held. The Judiciary Committee has considered the suggestions and feels that the instant bill, as amended, will make a valuable contribution to the law of appellate administrative procedures.

The bill has been approved in principle by the American Bar Association. It incorporates the recommendation of the President's Conference on Administrative Procedure in this field. It has the approval of the Judicial Conference of the United States.

#### STATEMENT AND ANALYSIS OF BILL

The instant bill would add to title 28 of the United States Code a new section 2112 entitled "Record on review and enforcement of agency orders." The section includes enforcement as well as review proceedings in the courts of appeals.



Subsection (a) of new section 2112 as set out in section 2 of the bill gives the courts of appeals power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings instituted in those courts to review orders of Federal administrative agencies, unless present law affecting those agencies specifically provides a procedure on the subject. The general power granted by section 2112 (a), however, will render separate statutory provisions unnecessary in the future.

The section also provides that the rules of court may authorize the Federal administrative agency concerned to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This has been a procedure which has been recently tried in several of the appellate courts and has been found quite feasible, saving both time and money.

As the result of a suggestion by the Securities and Exchange Commission subsection (a) also includes a provision providing that if review proceedings have been instituted in two or more courts with respect to the same order, the Federal administrative agency involved shall file the record in that court in which a proceeding was first instituted. The courts in which other proceedings are pending thereupon will transfer their proceedings to the court of appeals in which the record has been filed. In the interest of justice and for the convenience of the parties, such court may thereafter transfer the proceedings to another court of appeals.

Subsection (b) of proposed section 2112 provides for the abbreviation of the record by the inclusion only of such material as the rules of the court may require, or as the parties, including parties permitted to intervene by the court, may stipulate, or as the court may designate by order. The stipulation or order may provide in an appropriate case, such as a petition for a consent decree enforcing a National Labor Relations Board order, that no record at all be filed. There are in the courts of appeals many cases in which the National Labor Relations Board petitions the court to enter an enforcement decree which has been consented to by the parties concerned. The Board under present law must spend the time and public money required to send the court a complete transcript of the record before the latter can enter the decree requested. Subsection (b) will permit dispensing with the filing of the record in such a case, and a decree may be entered upon the petition and consenting answer or stipulation.

The provisions of subsection (b) will also enable the parties to abbreviate the record by eliminating all material not relevant to the actual questions raised on review, with consequent saving of time and expense. Provision is made, however, that additional portions of the record may be ordered by the court if found to be needed.

If the correctness of a finding of fact is in issue, subsection (b) requires all the evidence to be included in the record except such part as the parties, by stipulation, agree to omit as wholly immaterial to the questioned finding. This provision will enable the court to perform its duty in cases under section 10 (e) of the Administrative Procedure Act to "review the whole record or such portions thereof as may be cited by any party."

Several of the Federal agencies advised the committee that in some instances it would not only delay proceedings but it would be more

costly to abbreviate the record than it would be to send it in its entirety to the court of appeals. The subsection therefore contains a provision giving Federal agencies the right, at their option, to file the entire record instead of an abbreviated record.

The American Bar Association suggested, among other things, that the petitioner for review and the respondent in enforcement proceedings, should also have the right, at their option, to require the filing of the entire record. In accordance with this recommendation, the bill provides for the filing of the entire record of the proceedings upon such request.

Subsection (c) of new section 2112 as set out in section 2 of the bill authorizes the transmittal of certified copies instead of the original papers. A number of agencies pointed out that many of their records are public records which are required to be kept in their offices open to public inspection. It was also pointed out that in many instances an agency must retain the original papers for use in connection with a related case which is before it but which is not on review. The subsection therefore contains a provision authorizing the transmittal of the original papers at the option of the agency. It also provides that this situation may pertain to a part, as well as to the whole of, the record so that an agency may transmit some original papers and certified copies of others. All original papers and certified copies are to be returned to the agency at the conclusion of the case.

The bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of such agency orders as are by law reviewable by the district courts, such as exclusion and deportation orders. The Department of Justice has suggested that this be made explicit in the proposed legislation. Therefore, subsection (d) has been added to the proposed section 2112 to clarify the congressional intent.

Many of the statutes providing for the enforcement or review of agency orders provide that the courts of appeals acquire jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired by the courts until the filing of the transcript of the record. It was pointed out at the hearing that this latter provision is illogical and unwise, illogical since it places it within the power of the Federal agency to delay the acquisition of full jurisdiction by the court, and unwise since it raises a serious question as to the extent of the court's power to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time the record is actually filed. Accordingly, to take care of this situation, the language of the bill adopts the pattern of the Hobbs Act (5 U. S. C. 1036) relating to the review of orders of certain Federal agencies, and proposes to amend the various statutes to provide in all cases that the reviewing court shall acquire jurisdiction upon the filing of the petition on review.

At the hearings the committee's attention was called to the fact that the Federal Trade Commission act, the Clayton Act, the Packers and Stockyards Act, the National Labor Relations Act, the Federal Power Act and the National Gas Act provide that an agency acting under and pursuant to them may modify or set aside its order after a petition for review has been filed and up to the time of the filing of the record. Giving exclusive jurisdiction to the courts upon the filing of the petition, as the instant bill, as introduced, provides, could work

undue hardship. The bill was therefore amended to provide that although jurisdiction shall be immediately acquired by the court upon the filing of a petition for review, such jurisdiction will be concurrent and shall become exclusive only upon the filing of the record.

Sections 3 to 33 contain provisions which make changes to present law. For the most part those changes are to conform the present provisions of law to section 2 of the bill and are explained in another part of this report under "Explanation of amendments". The agencies, boards, commissions or offices whose orders are to be reviewable under the statutes proposed to be amended by sections 3 to 34 of the bill are the following:

Section 3. Federal Trade Commission

Section 4. Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System

Section 5. Postmaster General

Section 6. Secretary of Agriculture

Section 7. Contract Market Commission, Secretary of Agriculture

Section 8. Secretary of the Treasury

Section 9. Securities and Exchange Commission

Section 10. Securities and Exchange Commission

Section 11. Foreign Trade Zone Board

Section 12. Federal Communications Commission

Section 13. National Labor Relations Board

Section 14. Secretary of the Treasury

Section 15. Securities and Exchange Commission

Section 16. Federal Power Commission

Section 17. Federal Maritime Board; Secretary of Commerce

Section 18. Civil Aeronautics Board

Section 19. Federal Power Commission

Section 20. Secretary of Health, Education, and Welfare, Secretary of Agriculture

Section 21. Secretary of Health, Education, and Welfare

Section 22. Secretary of Labor

Section 23. Railroad Retirement Board

Section 24. Secretary of Agriculture

Section 25. Securities and Exchange Commission

Section 26. Securities and Exchange Commission

Section 27. Public Health Service

Section 28. Secretary of Agriculture

Section 29. Subversive Activities Control Board

Section 30. Detention Review Board

Section 31. Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission

Section 32. Department of Health, Education, and Welfare

Section 33. Attorney General (Executive Order 10644)

Section 34. Board of Governors of the Federal Reserve System



## VIEWS OF EXECUTIVE DEPARTMENTS

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,  
SUPREME COURT BUILDING,  
*Washington, D. C., April 5, 1957.*

HON. SAM RAYBURN,  
*Speaker of the House of Representatives,*  
*Washington, D. C.*

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States, I transmit herewith for the consideration of the Congress a draft of a bill concerning the record on review or enforcement of orders of administrative agencies by the courts of appeals.

The purpose of the proposed legislation is to promote economy in and to facilitate the review by the courts of appeals of orders of administrative agencies subject to review by the courts of appeals. It would permit the agencies pursuant to rules adopted by the several courts of appeals, with the approval of the Judicial Conference of the United States, to send to the court an abbreviated record where the whole record is not necessary and authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of review proceedings and to permit the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court all such materials transmitting the same or any part thereof to the court when and as required by the court.

The bill is the product of approximately 4 years' work by the Judicial Conference Committee on the Revision of the Laws, of which Circuit Judge Albert B. Maris of the third circuit is chairman, during the course of which affected agencies have been consulted and views of the judges through the country solicited and considered. The Judicial Conference of the United States has approved the proposed legislation upon consideration of the report and recommendation of its committee.

The bill would add to chapter 133 of title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative agencies. Among the principal provisions of the new section are the following:

Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies in which the applicable statute does not specifically prescribe these matters. The rules could authorize the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court the materials transmitting all or parts thereof to the court as required. It would provide that if proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."

The bill would provide that the record to be filed in the court of appeals should consist of the order in question, the findings or report

upon which it was based, and pleadings, evidence, and proceedings before the agency concerned, or such portions thereof as the rules of the court of appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding. The agency involved might as its option, if the rules of the court of appeals in which the proceeding was pending did not require the printing of the entire record, file in the court the entire record without abbreviation.

This is in accordance with the pattern of a late congressional enactment on the subject, the act of December 29, 1950, relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the court of appeals by delaying the filing of the record. Various other perfecting amendments of existing statutes are included in the bill.

It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the courts of appeals of orders of administrative agencies, will be conducive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted.

Sincerely yours,

ELMER WHITEHURST,  
*Acting Director.*

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SECURITIES AND EXCHANGE COMMISSION,  
*Washington, D. C., June 26, 1957.*

Re H. R. 6788, 85th Congress, 1st session, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CELLER: In response to your letter of May 16, 1957, I enclose 35 copies of a memorandum setting forth the comments of the Commission on the above bill.

The Commission has been advised by the Bureau of the Budget that it has no objection to the views expressed in the attached comments.

Sincerely yours,

ANDREW DOWNEY ORRICK,  
*Acting Chairman.*

MEMORANDUM OF SECURITIES AND EXCHANGE COMMISSION ON H. R. 6788, 85TH CONGRESS, 1ST SESSION, A BILL TO AUTHORIZE THE ABBREVIATION OF THE RECORD ON THE REVIEW OR ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BY THE COURTS OF APPEALS, ETC.

This Commission would be affected by sections 2, 9, 10, 15, 25, 26, and 33 of H. R. 6788, and these comments are limited to those sections.

We are in accord with the general objectives of the bill. We believe, however, that the bill should be amended so that the exclusive jurisdiction of a court of appeals will not attach to a particular proceeding until the filing of the record with the court by the Commission. In this respect the bill would not affect proceedings for review of actions of this Commission under the Securities Act of 1933, where the time the exclusive jurisdiction of the reviewing court attaches is not specified. It would affect review of Commission actions under the other laws the Commission administers. The Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 presently provide that the court of appeals with whom a petition for review is filed shall have exclusive jurisdiction upon the filing of the transcript of the record by the Commission. This generally occurs some days after the filing of the petition. Sections 10, 15, 25, and 26 of the bill would amend the court review provisions of those statutes to provide that upon the filing of a petition for review the court of appeals would have exclusive jurisdiction to affirm, modify, or set aside the Commission's order in whole or in part. We believe that the word "record" should be substituted for the word "petition" in the last sentence of the proposed amendment contained in each of those sections, so that there would be no acceleration of the date of the exclusive jurisdiction of the court of appeals.

We are aware of no advantage to be gained by conferring exclusive jurisdiction on the court of appeals before the record is filed in that court, and we believe that in some instances this (1) might have the effect of depriving a party of the right to a rehearing before the Commission; (2) might be construed to deny the Commission the power to stay its own orders after the filing of a petition for review; and (3) may be inconsistent with the provisions of section 2 of the bill, which would authorize the Commission where a petition has been filed in more than one court of appeals to file the record in that court where the Commission believes the proceedings might be carried on with the greatest convenience to all the parties. These possibilities arise from the fact that the proceedings before the Commission often involve various persons entitled to seek review.

(1) Rule XII (e) of the Commission's Rules of Practice (17 C. F. R. sec. 201.12 (e)) permits the filing of a petition for rehearing within 5 days after entry of the order complained of. Under the bill in its present form if one of the parties to the proceeding should file a petition for review before another party files a petition for rehearing, the Commission may lack jurisdiction to entertain the petition for rehearing for the reason that exclusive jurisdiction to modify or set aside the Commission's order in whole or in part would be vested in the court of appeals. This would deprive the Commission of the power to modify its order in light of objections or changed circumstances called



to its attention by a petition for rehearing or otherwise. Modification of an order, of course, may sometimes eliminate the basis for further litigation. Moreover, since proceedings before the Commission frequently involve more than one issue, the Commission may be deprived of power to modify its own order with respect to an issue which is not involved in the petition for review.

(2) Applications to the Commission for stays pending appellate court review are frequently made after the issuance of Commission orders. The Commission's familiarity with the case at this stage gives it a peculiar advantage in passing upon such applications. Where such applications are presented to an appellate court, the court generally has the benefit of the Commission's prior determination on the question of a stay. This may no longer be true if the proposed amendment is construed to deprive the Commission of jurisdiction in the matter once a petition for review has been filed.

(3) The Federal securities statutes commonly permit court review proceedings to be instituted in either the Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the allegedly aggrieved person resides or has his principal place of business. (See, e. g., sec. 24 (a) of the Public Utility Holding Company Act of 1935, 15 U. S. C., sec. 79x (a)). The proposed change may create a problem of construction with regard to the respective jurisdictions of the various courts of appeals where several petitions for review of a single Commission order are filed by various parties in different courts. Section 2 of the bill would amend title 28 of the United States Code by adding section 2112 (a), which would authorize the Commission to file the record in that court where the proceedings could be carried on with the greatest convenience to all the parties and would require the other courts to transfer the proceedings therein to the particular court in which the record was filed. This appears inconsistent with the language of the bill which would give the first court "exclusive jurisdiction" on the filing of the petition.

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DEPARTMENT OF AGRICULTURE,  
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR CONGRESSMAN CELLER: This is in reply to your letter of May 16, requesting the views of this Department with respect to H. R. 6788, 85th Congress, 1st session. We recommend the enactment of the bill provided that it is amended as herein suggested.

The main purpose of the bill is to authorize administrative agencies to abbreviate the administrative records to be reviewed in courts of appeals. We believe, on the basis of our experience, that generally it is more practicable to certify to the court the entire administrative record in a case. Unless a substantial portion of the administrative record can be omitted, e. g., a large block of pages in sequence from the transcript of the evidence, an attempt to abbreviate the record is wasteful of effort and productive only of relatively inconsequential results. Also in some cases the relevancy of substantial parts of the record cannot be known until the appellant's brief has been filed on appeal, setting forth the appellant's points or questions

on which judicial review is sought. Haggling by the parties with respect to the material to be included in the record, on appeal, may result in the need for extensions of time, for filing the record, and resultant delays in the enforcement of the agency's order. In view of these circumstances, we believe that an agency and the interested parties should be permitted to stipulate with respect to an abbreviated record on appeal, but that the administrative agency should have the unqualified right to file the entire record in a proceeding if the agency deems that action to be appropriate.

Our views with respect to the provisions for an abbreviation of the record are consonant with the recommendations and report of the Conference on Administrative Procedure called by President Eisenhower on April 29, 1953. The Conference recommended that legislation be adopted authorizing the filing of an abbreviated record by an agency "unless such agency in its sole discretion elects to file the entire record \* \* \*" (recommendation A-2). The Conference further stated, at page 50 of its report, that "[a]lthough perhaps not strictly necessary, paragraph (a) of the recommendation, giving the agency the option of filing the entire record, is designed to make it clear beyond any doubt that no abbreviation will be required where the effort and expense involved in segregating those parts not necessary to be filed from the rest of the record is disproportionate to the benefits gained by a shortened record, or where, for any other reason, the agency considers it undesirable to abbreviate the record."

The bill provides that if the correctness of a finding of fact is in question, all of the evidence shall be included in the record unless the parties stipulate for the omission of certain evidence. However, we have had experience with a number of cases involving statutory construction where the issues had their rootage in extensive testimony, e. g., *Grant v. Benson* (229 F. 2d 765 (C. A. D. C.), certiorari denied, 350 U. S. 1015), and in such cases, as well as those involving evidentiary issues, we believe that it is essential that the agency have the right to certify the entire record.

The bill further provides on page 4, lines 15-21, that "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." We recommend that the qualifying words, "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court," be deleted. The courts do not require the printing of the entire record and, therefore, we do not believe that the qualifying language serves any useful purpose. Also, inasmuch as the judiciary is in favor of reducing the size of administrative records, there would seem to be no basis for a rule requiring the printing of the entire record. The relevant or material parts of the record, as selected or designated by the parties, are printed on appeal, but the rules are somewhat different with respect to the procedure to be followed in arriving at that result.

If the bill is amended to permit the agency, without qualification, to file the entire administrative record, we recommend the enactment of section 2 of the bill providing for abbreviated records and, also, section 6 of the bill relating to the Packers and Stockyards Act, sec-



tion 7 of the bill relating to the Commodity Exchange Act, section 20 (b) of the bill relating to the Federal Food, Drug, and Cosmetic Act, section 24 of the bill relating to the Federal Seed Act, section 28 of the bill relating to the Sugar Act of 1948, and section 31 of the bill relating to the act of December 29, 1950.

Our further recommendations relate to clarifying amendments.

We suggest that the word "uniform" be inserted just prior to the word "rules" on page 2, line 8, of the bill and that the words "applicable in all courts of appeals" be inserted after the word "rules." The preamble to the bill states that its purpose is to make "uniform" the law relating to the record on review or enforcement of administrative orders and, therefore, we believe that the bill should make it plain that the rules are to be "uniform."

We recommend that a comma be inserted after the word "shall" on page 3, line 1, of the bill and that the following phrase be inserted: "irrespective of any other applicable statutory provisions,". In view of the first sentence in paragraph (a) on page 2, i. e., that the courts of appeals shall have power to prescribe the time and manner of filing and the contents of the record where the "applicable statute does not specifically prescribe such time or manner of filing or contents of the record," we are not sure, under the present language of the bill, whether the provisions for transferring the proceedings to a single court where two or more actions are instituted in different courts of appeals would apply where the applicable statute contains some provisions in this respect. Our recommendation is designed to obviate that uncertainty.

We recommend that the word "or" on page 3, lines 13 and 20, be changed to "and." We believe that the material in subsections (1), (2), and (3) on page 3 of the bill would all be included in the record on appeal, and, therefore, subsections (1), (2), and (3) should not be in the disjunctive.

We recommend that the word "stipulation" on page 3, lines 16 and 17, be changed to "designation." Otherwise, if the rules of the court do not "require" that certain material be included in the record, and if all of the parties do not stipulate with respect to the inclusion of certain material, it would require a motion in court to include the matter in the record, unless, of course, the material happened to be included within the category of material which could be designated irrespective of the provisions of subsections (1), (2), and (3) of section 2 (b) of the bill. If this change is adopted, then we recommend that the sentence beginning on page 3, line 23, be amended to provide that "Such an order, or a stipulation by the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding filed with the agency, board, commission or officer concerned or in the court in any such proceeding may provide in an appropriate case that no record need be filed in the court of appeals."

We recommend that the word "necessary" on page 4, line 11, of the bill be changed to "desirable" or "appropriate" so that the court will not be unduly restricted in permitting additional portions of the record to be certified.

We recommend that "Subsections (b) and (c)" on page 9, line 16, of the bill be changed to "Subsections (b), (c) and (d)," and that the following paragraph be inserted after line 8 on page 10: "(d) The



evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate, in paragraph (d) of section 204 of the Packers and Stockyards Act, the reference to the record being "duly certified \* \* \* as aforesaid" inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the words "third sentence" on page 10, line 20, of the bill be changed to "third and fourth sentences", that the word "is" on page 10, line 21, be changed to "are", and that the following sentence be inserted following the sentence ending on page 11, line 3: "The testimony and evidence taken or submitted before the said commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case." The purpose of this recommendation is to eliminate the words "duly certified \* \* \* as aforesaid" from the fourth sentence of section 6 (a) of the Commodity Exchange Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We recommend that the phrase "the weight of evidence, shall in like manner be conclusive" on page 11, line 15, of the bill be changed to the terminology appearing on page 8, lines 12 to 15, i. e., "substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive." We believe that the original phrase "the weight of evidence" was intended by Congress to mean the "substantial weight of evidence" rather than the "greater weight of evidence." The United States Court of Appeals for the Seventh Circuit has applied the phrase "the weight of evidence" substantially the same as the familiar substantial evidence test. (See *Great Western Food Distributors v. Brannan*, 201 F. 2d 476, 479-480, certiorari denied, 345 U. S. 997.) The court held that it "would seem, then, that the function of this court is something other than that of mechanically reweighing the evidence to ascertain in which direction it preponderates; it is rather to review the record with the purpose of determining whether the finder of the fact was justified, i. e., acted reasonably, in concluding that the evidence, including the demeanor of the witnesses, the reasonable inferences drawn therefrom and other pertinent circumstances, supported his findings" (ibid). Although we do not believe that this clarifying amendment is essential, we believe that inasmuch as this section is to be amended in other respects, it would be appropriate to enact this proposed amendment at the same time. Also, the phrase "the weight of the evidence" in the seventh sentence of section 6 (a) of the Commodity Exchange Act (42 Stat. 1001) should be amended in the same manner.

We recommend that the words "second and third" on page 22, line 13, of the bill be changed to "second, third, and fourth", and that the following paragraph be inserted on page 23, following line 4, of the bill: "The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." The purpose of this recommendation is to eliminate the words "duly

certified \* \* \* as aforesaid" from the fourth paragraph of section 410 of the Federal Seed Act, inasmuch as H. R. 6788 would eliminate the prior reference in the act to the certification of the record.

We believe that the enactment of the bill would not require any additional appropriation.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON, *Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
*June 7, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in response to your request of May 16, 1957, for a report on H. R. 6788, a bill "To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes."

The provisions of the bill are entirely of a technical legal character and, except for several technical changes not pertinent to this Department, are the same as the provisions of H. R. 6682, 84th Congress, on which bill this Department reported to your committee last year. Our comments on the present bill are therefore the same as our comments on the earlier bill, except for necessary changes in section, page, and line references and except for drawing attention to an omission in the nature of a typographical error. These changes are set forth in a revision sheet attached to the enclosed copy of our last year's comments.

Subject to the committee's consideration of the suggestions made in the enclosed memorandum, we would have no objection to enactment of the bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,  
*Assistant Secretary.*

[Revision Sheet to Department of Health, Education, and Welfare's Comments on H. R. 6682, 84th Cong., for H. R. 6788, 85th Cong.]

In comments on H. R. 6682—

(1) On page 3, part 4, second paragraph, delete the second and third sentences of that paragraph and substitute the following in place thereof:

"Line 19 on page 19 contains a typographical error. That portion of the bill should read: 'the *court* the record, etc.' It is obvious that the two words italicized were omitted from the printed version of the bill. Also the reference 'subsection (1)' on page 20, line 4, is a typographical error which should read 'subsection (b)'."

(2) On page 4, part 6, first paragraph, delete "17-23" and substitute in place thereof "18-24".

(3) Again on page 4, part 7, change, where used in that part, "33" to "35", "28" to "29", and "34" to "36".

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JULY 11, 1956.

COMMENTS ON H. R. 6682

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

We understand that the bill embodies a legislative proposal of the Committee on Revision of the Laws of the Judicial Conference of the United States. It reflects to some extent suggestions made by this Department to Judge Albert B. Maris, Chairman of that Committee, in connection with a preliminary draft of the bill.

The whole matter of records and briefs on review of administrative action has also been under study by the President's Conference on Administrative Procedure. We cooperated with the Conference's Committee on Judicial Review. The Committee's recommendations adopted by the Conference appear on pages 4 and 5, Report of the Conference on Administrative Procedure. These recommendations concern only the filing of an abbreviated record and do not also concern rule-prescribing power of the courts of appeals as to the time and manner of filing, and the contents of, the record, as the bill does. However, the President's Conference, in its comments on this matter, expressly stated that its recommendation "is not intended to constitute an exclusive prescription of the provisions of such a statute, nor is it intended to preclude the addition of other provisions, if such are determined to be desirable or necessary." It then called attention to the preliminary draft statute of the Committee on Revision of Laws of the Judicial Conference. Within their scope the recommendations of the President's Conference are substantially in accord with the provisions of the bill.

Subject to the committee's consideration of the comments and suggestions made below, the provisions of the bill, insofar as they involve the interests of this Department, would seem to constitute desirable steps toward facilitating judicial review of administrative action by courts of appeals and toward the promotion of uniformity in that respect.

Our specific comments on the provisions of the bill of concern to the Department are as follows:

1. Subsection (a) of the proposed title 28, United States Code, section 2112, which is in section 2 of the bill, would empower the United States courts of appeals, with respect to proceedings for judicial review of agency orders by such courts, to adopt rules prescribing the time and manner of filing, and the contents, of the record where the applicable statute does not specifically prescribe these requirements. In the case of this Department, this provision would apply to the following proceedings:

(a) Review—under section 701 (f) (1) of the Federal Food, Drug, and Cosmetic Act, as amended by section 21 of this bill—of orders to



issue, amend, or repeal regulations under section 401, 403 (j), 404 (a), 406 (a) and (b), 501 (b), 502 (d), 502 (h), 504, or 604 of the Federal Food, Drug, and Cosmetic Act;

(b) Review of orders on tolerances for pesticide chemicals in or on raw agricultural commodities (sec. 408 (i) of the Federal Food, Drug, and Cosmetic Act, as amended by sec. 20 of this bill);

(c) Appeals from certain actions of the Surgeon General under the hospital and medical facilities construction program (sec. 632 (b) of the Public Service Health Service Act (42 U. S. C. 291j (b)), as amended by sec. 27 of this bill);

(d) Review of certain actions of the Commissioner of Education relating to the construction of school facilities in areas affected by Federal activities (sec. 207 (b) of the act of Sept. 23, 1950, as amended (20 U. S. C. 277 (b))).

2. Subsection (a) of the proposed section 2112 would, when judicial-review proceedings have been instituted in two or more courts of appeals with respect to the same agency order, require the agency to "file the record in that one of such courts in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" (presumably including the agency). The other courts would thereupon be required to transfer their cases to the court in which the record was filed. The courts would seem to have no discretion in the matter.

In the light of experience, we believe that provisions for bringing together and in effect consolidating parallel review proceedings in different circuits involving the same administrative action are desirable from the point of view of conserving the time of the courts and administrative agencies, avoiding unnecessary expense in filing two or more copies of the record, and avoiding delay, uncertainty, and confusion, and possible conflicts of opinion among coordinate courts. The committee may, however, wish to consider whether, as proposed by the bill, the provision should be mandatory upon the agency, whether the agency's judgment should be final, and whether the court selected should necessarily be one of the courts in which a review proceeding was theretofore commenced. A complication, moreover, may arise out of the fact that the record may already have been filed in one court, and the case heard and possibly even decided, by that court before judicial-review proceedings are commenced elsewhere.

One possible alternative would be to provide that the court in which a proceeding for judicial review of an agency order is first commenced shall have exclusive jurisdiction and that other courts shall transfer their cases to that court, except that the first court, upon application of the agency or of any other party in interest, may transfer all the proceedings (including those transferred to it from other courts) (a) to any other court of appeals stipulated by the parties or (b), in the absence of such stipulation, to any other court of appeals in which in the deciding court's judgment the convenience of all the parties would be best served.

3. Subsection (b) of the proposed section 2112 would authorize the use of an abbreviated record, in accordance with court rules, stipulation of the parties, or order of the court, but provides that if the rules of the court do not require the printing of the entire record in that court the agency may nevertheless, at its option, file the entire record of the proceedings before it without abbreviation.

These provisions are satisfactory to us in their present form.

4. Section 20 of the bill would amend section 408 (i) (2) and (3) of the Federal Food, Drug, and Cosmetic Act (relating to tolerances for pesticide chemicals in or on raw agricultural commodities) in three respects: A copy of the petition for judicial review filed with the court would have to be forthwith transmitted by the clerk of the court to the Secretary whose order is to be reviewed, instead of being "served" on the Secretary. Secondly, the time, manner, and contents of the administrative record to be filed with the court would have to conform to the proposed section 2112 of title 28 of the United States Code. Thirdly, the jurisdiction of the court would attach upon the filing of the petition for judicial review, not (as under present law) upon the filing of the record with the court.

We believe that these changes would be desirable improvements in the law, though we regard the first change above as largely one of form rather than of substance. The reference to "subsection (1)" on page 19, line 25, however, is a typographical error. It should read "subsection (l)".

5. Section 21 of the bill would amend section 701 (f) of the Federal Food, Drug, and Cosmetic Act to provide in effect that the filing and contents of the administrative record with the court shall be governed by the proposed section 2112 of title 21 United States Code. We believe that, in the interest of uniformity within the Federal Food, Drug, and Cosmetic Act the additional changes contained in section 20 of the bill, above referred to, should also be incorporated in section 21. We therefore suggest that section 21 be changed to read as follows:

"SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C., 371 (f)), are amended to read as follows: 'A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code.'

"(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 371 (f)) is amended to read as follows: 'Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently'."

6. Similarly, we suggest that, in line with the above-mentioned changes, section 27 (a) of the bill (p. 24, lines 17-23), be changed to read as follows:

"SEC. 27. (a) Paragraph (1) as amended, of section 632 (b) of the Public Health Service Act (42 U. S. C. 291j (b) (1)) is amended to read as follows:

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of



such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose, and thereupon the Surgeon General shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code'."

7. Again, in order to make the section on review of actions of the Commissioner of Education consistent with these changes, we suggest the following changes which we believe are largely clarifying rather than additive of substantive law. Change section 33 in the bill (p. 28, lines 11-12) to section 34 and add a new section to read as follows:

"SEC. 33. Section 207 (b) of the Act of September 23, 1950, as amended (20 U. S. C. 277 (b)) is amended by adding at the end of that subsection the following: 'A copy of a notice of appeal shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of a notice of appeal with it, the court shall have jurisdiction to affirm or set aside the decision of the Commissioner in whole or in part'."

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FEDERAL MARITIME BOARD,  
Washington, D. C., June 5, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 16, 1957, for the views of the Federal Maritime Board with respect to H. R. 6788, a bill To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The bill would amend chapter 133 of title 28 of the United States Code by adding a new section 2112, which would govern the time and manner of filing, and the contents of, the record to be filed in United States courts of appeals, and the venue of such courts, in proceedings instituted in such courts to review or enforce orders of United States agencies, boards, commissions, and officers. The bill would also amend statutes conferring jurisdiction on such courts to review and enforce such orders to make the time of filing the petition to review or enforce the order the uniform time for the attaching of jurisdiction. Under some such statutes, jurisdiction does not now attach until the record is filed.

The new section 2112 (which the bill would add to title 28 of the United States Code) would provide that the record to be filed in courts of appeals in proceedings to review or enforce orders of United States agencies, boards, commissions, or officers shall consist of—

(a) The contents prescribed by the statute conferring jurisdiction on courts of appeals to review or enforce the order if such statute prescribes such contents; or

(b) The order to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer, if (1) the



statute conferring jurisdiction does not prescribe the contents of the record, and (2) the rules of the courts of appeals with venue do not require the printing of the entire record to be filed, and (3) the agency, board, commission, or officer elects to file all of the foregoing; or

(c) If the agency, board, commission, or officer is not eligible under (b) above to elect, or does not elect, to file all of the material there specified, such portions thereof as (1) the rules of the court of appeals with venue require, or (2) the parties by written stipulation, consistent with such rules, designate, or (3) the court upon motion of any party, or on its own motion, designates, but if the correctness of a finding of fact is in question, all the evidence shall be included except such portion thereof as the parties agree to omit.

The bill would authorize the courts of appeals, with the approval of the Judicial Conference of the United States, to make rules, not inconsistent with the foregoing provisions, with respect to the content of the record to be filed, and with respect to the time and manner of filing the record if the statute conferring jurisdiction does not prescribe the time and manner of filing. Since the foregoing provisions authorize the parties to abbreviate the record by stipulation consistent with the rules of the court, and authorize the court by order to designate the contents of the record, the possible area for the operation of such rules with respect to the contents of the record appear to be to limit abbreviation of the record by the parties and to state the limits within which the court would require abbreviation if the agency, board, commission, or officer is not eligible to elect, or does not elect, to file the entire record of the proceedings before it without abbreviation.

The new section would further provide that the agency, board, commission, or officer may transmit to the court of appeals either the original papers comprising the record to be filed or certified true copies of such papers. The apparent purpose of this provision is to authorize the agency, board, commission, or officer to file the original papers in those circumstances in which it considers that the expense of preparing copies would be unjustified. It is evidently intended, nevertheless, that if the bill is enacted the Judicial Conference of the United States might approve rules of court which might under some circumstances require the printing of the entire record to be filed, because subsection (b) of the new section provides that, if the rules of court require the printing of the entire record to be filed, the agency, board, commission, or officer shall not have the option of filing the entire record of the proceedings before it without abbreviation.

Sections 29 and 30 of the Shipping Act, 1916, as amended (46 U. S. C. 828-829), make orders issued by the Federal Maritime Board under that act enforceable in the United States district courts. The bill, therefore, would not apply to proceedings to enforce such orders.

Public Law 901, 81st Congress (the act of December 29, 1950, 64 Stat. 1129; 5 U. S. C. 1031-1042), however, confers on the United States courts of appeals jurisdiction to review orders issued by the Federal Maritime Board under the Shipping Act, 1916, and provides (sec. 6) that the record to be filed in the court of appeals in such proceedings shall consist of the pleadings, evidence, and proceedings before the agency or such portions thereof as the rules of court require

or such portions as the parties, with the approval of the court of appeals, agree upon in writing.

The bill would amend section 6 of Public Law 901 to provide that the record to be filed shall be the record provided for in section 2112 of title 28, United States Code. This amendment would change existing statutory law in the following respect: (1) It would require that all of the evidence be included in the record if the correctness of a finding of fact is in question; and (2) it would give the Board the option of filing the entire record of the proceedings before it without abbreviation in those cases in which the rules of court do not require the printing of the entire record to be filed.

The bill would amend section 611 of the Merchant Marine Act, 1936, as amended, which provides that, if an operating-differential subsidy contractor believes that the United States has without just cause defaulted upon, or canceled, his operating-differential subsidy contract, he may apply to the Maritime Commission, setting forth his contentions, for permission to transfer his vessels to foreign registry, and if the Commission, after hearing, finds affirmatively on the issue, it shall grant the application, but otherwise deny it. Section 611 further provides that, if the application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia by filing in that court a written petition, a copy of which shall be served upon any member of the Commission, or upon any officer thereof designated for that purpose, and the Commission shall thereupon file in the court a transcript of the record upon which the order was entered, and upon such filing the court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause and to affirm or set aside such order.

Section 17 of the bill would amend this section 611 of the 1936 act to provide that a copy of the petition for review shall be served on a member of the Board rather than on a member of the Commission, that the record provided for in section 2112 of title 28 of the United States Code shall be filed in the court rather than a transcript of the record upon which the order was entered, and that the jurisdiction of the court shall attach when the petition for review is filed rather than when the record is filed.

Reorganization Plan No. 21 of 1950 abolished the Maritime Commission, created the Federal Maritime Board, and divided between the Federal Maritime Board and the Secretary of Commerce the functions the Maritime Commission had under various statutes. Under the plan, the functions under section 611 of the Merchant Marine Act, 1936, would be exercised in some cases by the Federal Maritime Board and in others by the Secretary of Commerce. Under section 905 (e) of the Merchant Marine Act, 1936, as amended (Public Law 586, 82d Cong.; 66 Stat. 760), the word "Commission," as used in the Merchant Marine Act, 1936, means the Federal Maritime Board or the Secretary of Commerce, as the context may require to conform to Reorganization Plan 21 of 1950. Section 17 should be amended to let this definition operate properly under Reorganization Plan No. 21. This can be accomplished simply by restoring in section 17 of the bill the word "Commission" in place of the word "Board" wherever it appears in the section.



The bill would provide for abbreviated records to be filed in courts of appeals in proceedings in those courts to review or enforce orders of agencies, boards, commissions, or officers of the United States and for review or enforcement of such orders on the basis of the original papers, and would make the time of the filing of the petition for review the time for the attaching of the court's jurisdiction.

If section 17 of the bill is amended as suggested, the Federal Maritime Board would have no objection to enactment of the bill.

Sincerely yours,

CLARENCE G. MORSE, *Chairman.*

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FEDERAL COAL MINE SAFETY BOARD OF REVIEW,  
*Washington, D. C., June 4, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Reference your letter dated May 16, 1957, relating to H. R. 6788, the Board has requested that I inform you as to its views on this proposed legislation.

The Board fully agrees with the general purposes of the bill, that is, to reduce the costs and simplify the procedures in connection with appellate review. However, for the reasons indicated below, the Board seriously questions the language of the provisions applicable to this agency.

As you will recall, the Board is a completely independent agency created by title II of the Federal Coal Mine Safety Act (66 Stat. 692 et seq.). Its sole duty is quasi-judicial in nature, namely, to hear and determine applications filed with it by coal-mine operators seeking annulment or revision of, and temporary relief from, orders issued by inspectors or the Director of the United States Bureau of Mines, under the Federal Coal Mine Safety Act. The immediate parties to the adversary proceeding before the Board are the coal-mine operator who files the application and the Director of the United States Bureau of Mines. Either the operator or the Director can appeal directly from a Board order to the United States court of appeals for the circuit in which the mine affected is located, and then to the Supreme Court of the United States. The Board itself is not a party to, nor does it participate in any manner in, the appellate proceeding.

Functionally, the Board is thus closely analogous to United States district court judges who, like the Board, are not parties to appeals from their own decisions. The Board is unlike most, if not all, the other agencies subject to H. R. 6788, such as the National Labor Relations Board, the Civil Aeronautics Board, and the Subversive Activities Control Board, which themselves participate in the appeals for review or enforcement of their own decisions and orders.

As to the record to be filed on appeal from a Board order, section 208 (b) of the Federal Coal Mine Safety Act (66 Stat. 702) now reads as follows:

"(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail, to the other party and to the Board. Upon receipt of such copy of a notice of appeal the Board shall promptly certify and file in such court a complete transcript of



the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal."

Section 32 of H. R. 6788 would amend the second and third sentences of section 208 (b) to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

Section 2112 of title 28, United States Code, referred to above, is added by section 2 of H. R. 6788 and provides among other things:

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

The above language in section 2112, while not completely clear in its application to this agency, appears to imply that the Board would be required to participate in determining the scope or nature of the record to be filed on appeal. Such activity would, of course, directly conflict with the statutory position and functions of this agency. The Board, as already mentioned, is not a party to the appellate proceeding and, like United States district court judges, should not therefore be required to determine the record to be filed on appeal from its own order. Although a determination of the appellate court record may be consistent with the statutory duties of other agencies covered by

H. R. 6788, it is wholly inconsistent with the status and functions of this Board under the Federal Coal Mine Safety Act.

It is also significant that section 32 of H. R. 6788 would amend the time within which the Board must file the record in the appellate court. As section 208 (b) of our act now reads, the Board must certify and file the complete transcript of record "promptly" upon receipt of notice of appeal. However, under section 32 of H. R. 6788, the word "promptly" would be deleted and the time for filing would be determined, as provided in the proposed section 2112 (a) of title 28, United States Code, by the rules of the several courts of appeal.

Needless to say, Congress emphasized the need for promptness in the Board's filing of the record on appeal (as well as in other Board actions) to assist in effectuating the basic purpose of the Federal Coal Mine Safety Act; that is, the prevention of major coal-mine disasters. While the provisions of H. R. 6788 might not prevent expeditious action by the Board, the specific mandate in the present law would have been deleted and, to that extent, the congressional purpose might be impaired.

The Board has considered whether any limited changes in the language of H. R. 6788 could be suggested, which would adequately resolve the problems discussed above. However, the core of this bill is set forth in the proposed section 2112 of title 28, United States Code; and that section appears to be broadly framed with reference to agencies differing in status from this Board. Therefore, rather extensive recasting would seem to be required.

In any event, it appears doubtful that the present operation of section 208 (b) of our act requires amendment in order to achieve the results sought by the proposed legislation. For example, there is little possibility that an appeal from a Board order would be filed in more than one appellate court, because section 208 (a) of the present act expressly limits "judicial review" to "the United States Court of Appeals for the circuit in which the mine affected is located."

As to excessive financial burdens on the parties, the cost of certifying the complete transcript of Board records has been so insignificant in each case appealed to date, that no charges have been assessed by the Board for this service. As to the burden on the courts, the size of Board records has been relatively small compared with those of other agencies, so that few, if any, storage difficulties have arisen in this regard. Moreover, under such existing rules as those in the Court of Appeals for the Fourth Circuit, the Board has recently filed merely a certified list of the materials in the record. And the abbreviation of the actual portions of the record considered by the court has likewise been accomplished under present court rules.

In view of the foregoing, you may wish to consider excepting this Board from the application of H. R. 6788. This result could be accomplished simply by deleting section 32 of the proposed bill.

The Board hopes that the above comments may prove of value to you.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ROBERT J. FREEHLING, *General Counsel.*



CIVIL AERONAUTICS BOARD,  
*Washington, D. C., June 6, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CELLER: This is in further reply to your letter of May 16, 1957, acknowledged May 22, 1957, requesting our comment on H. R. 6788, a bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

The Board believes that the preparation and filing of the complete transcript of the record of the administrative proceeding often involves needless work and expense and sometimes serves to delay the review proceeding. Accordingly, the Board looks with favor upon any proposal which will serve to eliminate these burdens and delays. While we note that many of the changes suggested by the bill have already been incorporated into the existing rules of the various circuit courts of appeals, those rules would appear to be applicable only to the extent that an underlying statutory provision will permit. Legislation along the lines of H. R. 6788 will provide the necessary statutory authority and further will provide for various contingencies not covered by the existing rules.

H. R. 6788 has been examined from the standpoint of its relation to review proceedings involving Civil Aeronautics Board orders, and in general we endorse the objectives and provisions of the bill. However, we have one change to suggest. While the Board favors a procedure which permits the filing of an abbreviated record either by stipulation or by court order, we recommend that the bill be amended so as to permit an administrative agency when it believes it advisable to file a complete record. Since the burden and expense of preparing and filing the record customarily is placed on the agency, it is believed that it should be left to agency option whether a complete record should be filed with the reviewing court, whether negotiations should be entered into looking toward a stipulated record, or whether an order should be sought from the court for leave to file less than the full record. Experience indicates that, in many of the Board's cases, greater time and effort may be required on the part of all concerned in attempting to determine the content of an abbreviated record than would be expended in the present procedure of certifying the entire transcript. Further, negotiation or other procedures looking toward an abbreviated record could be used for purposes of delay. The agency's own interest in eliminating needless work and expense will serve to insure that stipulations will be entered into whenever feasible, or application made to the reviewing court for leave to file less than the complete record in an appropriate case.

Accordingly, the Board recommends that the sentence beginning on line 15, page 4 of H. R. 6788 and ending on line 21, page 4, be stricken and the following substituted:

"The agency, board, commission or officer concerned shall have an option without regard to the foregoing provisions of this subsection, to file in the court in which a proceeding is pending the entire record of the proceedings before it without abbreviation."



Subject to the above recommendation for amendment, the Board endorses the enactment of H. R. 6788.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES R. DURFEE, *Chairman.*

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JUNE 10, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives,*  
*Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would authorize the several courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. It would also provide for abbreviation of such records pursuant to rules of court, stipulation of the parties, or court order. The bill would permit an agency which issued an order to file the original papers in lieu of a transcript and to regain possession of them upon completion of the proceedings in the court of appeals. It would also incorporate the foregoing provisions in a number of existing statutes dealing with review of administrative orders by courts of appeals.

The Department of Justice considers the proposal a laudable effort to eliminate unnecessary expenditures in time and money in the review of agency orders by the courts of appeals. Accordingly, it recommends enactment of the measure. It is noted that at its annual meeting in September 1956, the Judicial Conference reaffirmed its previously expressed approval of this legislation with a minor amendment.

Some concern has been expressed that the broad language of the proposed section 2112 (a) may possibly be construed to apply to certain proceedings not intended to be covered, for example, decisions of the Tax Court and administrative orders for the exclusion and deportation of aliens entered under the provisions of the Immigration and Nationality Act of 1952 (66 Stat. 1166, 8 U. S. C. A. (1101 et seq.)). As you know, Tax Court decisions are presently subject to review by the courts of appeals pursuant to section 7482 of the Internal Revenue Code of 1954 (26 U. S. C. 7482); exclusion and deportation orders, to the extent that judicial review is permissible, are uniformly reviewable in the first instance in the district courts. The apprehension arises because of the broad language of section 2112 (a) that it shall apply

to "all proceedings instituted in the courts of appeals to \* \* \* review \* \* \* orders of administrative agencies, boards, commissions and officers \* \* \*." In this connection it might be both desirable and appropriate to incorporate in the committee reports express language that the bill is not intended to apply to decisions of the Tax Court or to exclusion and deportation orders. Although there would appear to be little basis for believing that the bill in its present form could reasonably be construed to extend to such proceedings, it may nevertheless be wise to dispel any possible ambiguity in this regard.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,  
*Deputy Attorney General.*

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INTERSTATE COMMERCE COMMISSION,  
*June 3, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR CHAIRMAN CELLER: Your letter of May 16, 1957, requesting an expression of views on a bill, H. R. 6788, introduced by you, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the court of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, has been referred to our committee on legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

The purpose of H. R. 6788 is clearly stated in its title as quoted above. Except for an occasional case arising under section 11 of the Clayton Antitrust Act (15 U. S. C. 21), this bill would not affect the review of orders of the Interstate Commerce Commission. The majority of the orders of this Commission are issued under the Interstate Commerce Act, and, under the provisions of section 1336, title 28, of the United States Code, are reviewable by three-judge United States district courts instead of by United States courts of appeals as in the case of orders of many of the other administrative agencies.

It is noted that section 2 of the bill would provide, among other things, that where proceedings have been instituted in two or more courts of appeal with respect to the same order of the administrative agency, the agency concerned shall file the record in that one of such courts in which, in its judgment, the proceedings may be carried on with the greatest convenience to all of the parties involved. This section would further provide that the other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed by the agency concerned.

While we wholeheartedly favor having such multiple actions determined by a single court, we do not believe that it would be desirable, in such cases, for the defendant agency to have the privilege and duty of determining in which court actions against it shall be determined. It would seem preferable that some arrangement be devised whereby such a determination shall be made by the judiciary.

Subject to the foregoing reservation, we believe that enactment of H. R. 6788 would be desirable.

Respectfully submitted.

OWEN CLARKE, *Chairman,*  
ANTHONY ARPAIA,  
ROBERT W. MINOR,  
*Committee on Legislation.*

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FEDERAL TRADE COMMISSION,  
OFFICE OF THE CHAIRMAN,  
*Washington, June 11, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your letter of May 16, 1957, inviting an expression of the views of this Commission upon H. R. 6788, 85th Congress, 1st session, a bill "To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes."

This bill would add a new section to chapter 133 of title 28 of the United States Code and would amend the acts of various administrative agencies, thereby making uniform the law relating to the record on review or enforcement of orders of such agencies. The Commission generally is in accord with the purposes of the bill, but desires to call your attention to an inconsistency in the proposed amendments to the Federal Trade Commission Act and the Clayton Act, contained in sections 3 and 4 of the bill.

Section 3 (a) of the bill, amending the sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), would provide that "until the record in the proceeding has been filed in a court of appeals of the United States," the Commission may at any time modify or set aside its report or order to cease and desist. Section 3 (c) of the bill, amending subsection (d) of section 5, would provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions, in substance, are the same as the corresponding provisions of the present statute. They contemplate that the jurisdiction of the court will not attach until the record is filed. But section 3 (b) of the bill, amending the third sentence of subsection (c) of section 5, would provide that the jurisdiction of the court of appeals would attach "Upon such filing of the petition," without reference to the filing of the record. The comparable provision of the present statute provides that such jurisdiction shall attach "upon such filing of the petition and transcript \* \* \*." We think that to remove this inconsistency the third sentence of subsection (c) of section 5 of the Federal Trade Commission Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill: "Upon such filing of the petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals,* the court shall have jurisdic-



tion of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

We consider the present provisions of law, which afford the Commission an opportunity to consider an act upon petitions for reconsideration before court review, to be very desirable. They enable the Commission to correct inadvertent errors that occasionally occur, and are quite valuable in preventing unnecessary litigation through the opportunity for careful reconsideration in appropriate instances. We think it would be regrettable to have any inconsistency in, or uncertainty about, the continuance of these useful provisions of existing law.

For the same reasons, like observations are pertinent with reference to section 4 of the bill, amending section 11 of the Clayton Act, as amended (64 Stat. 1127). Section 4 (a) would amend the sixth sentence of the second paragraph of section 11 of the act so as to provide that "Until the record" is filed with a court of appeals the Commission may modify or set aside its report or order to cease and desist. Section 4 (d) would amend the fifth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals shall be exclusive upon the filing of the record with the court. These provisions are substantially the same as the corresponding provisions of the present statute, and contemplate that the jurisdiction of the court will not attach until the record is filed. Section 4 (c) of the bill, however, would amend the third sentence of the fourth paragraph of section 11 of the act so as to provide that the jurisdiction of the court of appeals would attach "Upon the filing of such petition," without reference to the filing of the record.

In order to remove this apparent inconsistency, we think the third sentence of the fourth paragraph of section 11 of the Clayton Act should be modified so as to provide as follows, the italicized words having been added to the language of the proposed bill:

"Upon the filing of such petition *and record, or upon the filing of a stipulation or the entry of an order to the effect that no record need be filed in the court of appeals*, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

We have only one further comment, which relates to the last sentence of subsection (b) of proposed section 2112 of title 28 of the United States Code, contained in section 2 of the proposed bill. That sentence is in the following language: "*If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court* the agency, board, commission or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation." [Italic supplied.]

The Commission is anxious to preserve the option of filing a transcript of the entire record in the court of appeals. While we believe the above language may accomplish this purpose, we see no need for the portion underscored above and suggest that it be stricken.

By direction of the Commission.

JOHN W. GWYNNE, *Chairman*.

N. B.—The Bureau of the Budget advises there is no objection to the submission of this report.

FEDERAL POWER COMMISSION.

*Washington, June 7, 1957.*

H. R. 6788, 85th Congress, "To authorize the abbreviation of the record \* \* \*".

HON. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,*

*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: In response to your request of May 16, 1957, there are enclosed copies of the report of the Federal Power Commission on the subject bill.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman*.

Enclosure No. 104405 (three copies report).

FEDERAL POWER COMMISSION REPORT ON H. R. 6788, 85TH CONGRESS

A bill to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes

Section 2 of this bill, which is drafted as an amendment to the United States Code, would authorize the courts of appeals (with the approval of the Judicial Conference of the United States) to adopt rules prescribing "the time and manner of filing and the contents of the record" on review of orders of administrative agencies, including the Federal Power Commission; empower the agencies, when petitions for review of the same order are filed in two or more courts, to select the court in which the record shall be filed and the proceeding heard and decided; authorize abbreviation of the record by court rule, or stipulation of all parties, or by court order; permit transmittal of certified lists of materials comprising the record or certified true copies in lieu of originals, and provide for the holding of the originals by the agencies and the ultimate return to such agencies of any originals or copies which may have been filed.

Sections 16 and 19 would respectively amend the review sections of the Federal Power Act and Natural Gas Act <sup>1</sup> to provide expressly that until the filing of the record in a court of appeals the Federal Power Commission can modify or set aside any order "in such manner as it shall deem proper."

Other sections of the act relating mostly to review provisions of statutes administered by other agencies will not be reported on herein.

<sup>1</sup> These sections, unlike sec. 2 of the bill, are drafted as amendments to the statutes, not the United States Code.

In general this Commission is in sympathy with the apparent objectives of sections 2, 16, and 19 of the bill. However, it is not convinced of the necessity for express statutory authority as carried in those sections of the bill. In any event, the Commission believes that they should not be enacted unless certain of their provisions are amended. Our specific comments follow, in the order of the provisions to which they relate:

Page 2, lines 1-5: The bill should be redrafted as an amendment to an existing statute (or as a new statute), not as an amendment to the United States Code. The code is merely evidence of the statutes.

Page 2, lines 6-8: The advisability of making this part of the rule-making power of the several courts of appeals dependent upon approval of the Judicial Conference, which is an extrajudicial advisory body, seems questionable.

Page 2, lines 8, 9 and 14: The bill should not authorize court rule-making on (1) "time \* \* \* of filing," (2) "manner of filing," and (3) "contents of," the record, where existing statutory law covers 1 or 2 but not all three of those matters, for that would authorize court rules to supersede existing statutes which cover 1 or 2 but not all 3 topics. The need for clarification in this regard would seem to be indicated.

Page 2, line 20: The bill would require "the record" (which would mean the original and full record) to be certified and filed or held for the court of appeals. Some clarification of this particular language would seem to be necessary in order to eliminate any possible conflict with the provisions giving the courts power to prescribe rules on the same subject (p. 2, lines 6-14), particularly the provision for rules authorizing the filing of a certified list describing the materials comprising the record in lieu of filing the record itself (p. 2, lines 14-20), and also with the provision (p. 4, line 22, to p. 5, line 13) permitting true copies of the whole or parts of records to be filed in lieu of the original papers. This should be amended by permitting the agency to file in court only lists of the papers and documents comprising the record rather than either the original or a copy.

The Commission believes that it is particularly desirable that legislation on this subject facilitate the shortening of the record by agreement as provided in section 2 (c) of this bill (p. 3, line 24, to p. 4, line 8). In this connection the Commission believes that it would be desirable to further provide, where any question of the sufficiency of the evidence to support the findings or order is raised, that the party raising the question must bear the burden and expense of printing the record for the court except insofar as opposed parties are willing and able to agree to abbreviation of the portions to be printed.

With respect to sections 16 and 19 of the bill (relating to the Federal Power Act and the Natural Gas Act), it is the Commission's view that they are unnecessary and that their omission (and the omission of any corresponding provisions in other sections relating to other court review statutes which may be no more necessary) would greatly simplify the bill. With specific reference to these sections it is presumed that the purported grant of power to this Commission to modify or set aside any finding or order "in such manner as it shall deem proper" is intended to be tied in with the other provisions of those statutes. Consequently, on page 17, line 5, and page 18, line 21.



the words "under the provisions of this act," should be inserted after the words "in part,". The word "find" on page 17, line 5, should be amended to read "finding."

However, legislation on this subject may not be necessary at this time because the entire matter can be handled adequately by court rules. For example, a number of the courts (Court of Appeals 2d, 3d, 4th, 5th, 10th, and the District of Columbia Circuit) have promulgated rules to facilitate the filing of agency records for review. There could readily be opportunity for further experimentation, which is possible under the statutes as they now stand, but in any event the present degree of flexibility in such matters should be preserved.

FEDERAL POWER COMMISSION,  
By JEROME K. KUYKENDALL, *Chairman*.

#### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italics:

### TITLE 28. UNITED STATES CODE

#### CHAPTER 133. REVIEW—MISCELLANEOUS PROVISIONS

*	*	*	*	*	*	*
2112. Record on review and enforcement of agency orders.						
*	*	*	*	*	*	*

§ 2112. *Record on review and enforcement of agency orders.*

(a) *The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts*

in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district court.



SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112): "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission*, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein *concurrently with the Commission until the filing of the record and shall have power to make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite*."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113):

"(d) [The] *Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive*" (15 U. S. C., § 45, Federal Trade Commission).

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127): "Until [a transcript of] the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127):

"If such person fails or neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall [certify and] file [with its application a transcript of] the [entire] record in the proceeding, [including all the testimony taken and the report and order of the Commission or Board] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein,



*concurrently with the Commission or Board until the filing of the record and shall have power to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission or Board."*

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board [forthwith] shall [certify and] file in the court [a transcript of] the record in the proceeding, as [hereinbefore] provided in section 2112 of title 28, United States Code.* Upon the filing of [the transcript] *such petition* the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, *determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."*

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128):

"[The] *Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive*" (15 U. S. C., sec. 21, Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System).

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Post Office Department and thereupon the said department [forthwith] shall [certify and] file in the court [a transcript of] the record [and testimony], as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* the court shall have jurisdiction to affirm, set aside, or modify the order of the department" (39 U. S. C., sec. 576, Postmaster General (District of Columbia Circuit only)).

SEC. 6 (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 193, Secretary of Agriculture).

(b) Subsections (b), (c) and (d) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code.* If before such [transcript] *record* is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such **[transcript]** *petition* is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal."

"(d) The evidence so taken or admitted **[duly certified]** and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." (7 U. S. C., sec. 194, Secretary of Agriculture.)

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(h) The court of appeals shall have **[exclusive]** jurisdiction, *which upon the filing of the record with it shall be exclusive*, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section **[240 of the Judicial Code]** *1254 of title 28*, if such writ is duly applied for within sixty days after entry of the decree" (7 U. S. C., sec. 194, Secretary of Agriculture).

SEC. 7. (a) The third and fourth sentences of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001): "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall **[forthwith prepare, certify, and]** *thereupon* file in the court **[a full and accurate transcript of]** the record in such proceedings **[including the notice to the board of trade, a copy of the charges, the evidence, and the report and order]**, *as provided in section 2112 of title 28, United States Code*. The testimony and evidence taken or submitted before the said Commission, duly **[certified and]** filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case." (7 U. S. C., sec. 8, Contract Market Commission.)

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended: "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to the Secretary of Agriculture* **[by delivering such copy to him]** and thereupon the Secretary of Agriculture shall **[forthwith certify and]** file in the court **[a transcript of]** the record theretofore made, **[including evidence received]** *as provided in section 2112 of title 28, United States Code*. Upon the filing of the **[transcript]** *petition* the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive" (7 U. S. C., sec. 9, Secretary of Agriculture).

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865): "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to the Secretary of the Treasury*, or **[upon]** any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall **[certify and]** file in the court **[a transcript of]** the record upon which the order complained



of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (19 U. S. C., sec. 1641, Secretary of the Treasury).

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code*" (15 U. S. C., sec. 77i, Securities and Exchange Commission).

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, and enforce or set aside such order, in whole or in part.*"

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002): "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall [forthwith prepare, certify, and] *thereupon file in the court [a full and accurate transcript of] the record in the proceedings held before it under this section, [the charges, the evidence, and the order revoking the grant] as provided in section 2112 of title 28, United States Code*" (19 U. S. C., sec. 81r, Foreign Trade Zone Board).

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719): "Within thirty days after the filing of an appeal, the Commission shall file with the court [a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order] *the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code* (47 U. S. C., sec. 402, Federal Communications Commission (District of Columbia Circuit only)).

SEC. 13. (a) Section (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147):

"(d) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147):

"(e) The Board shall have power to petition any court of appeals of the United States [(including the United States Court of Appeals for the District of Columbia)], or if all the courts of appeals to which



application may be made are in vacation, any district court of the United States [(Including the District Court of the United States for the District of Columbia)], within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall [certify and] file in the court [a transcript of] the [entire] record in the proceedings [including the pleadings and testimony upon which such order was entered and the findings and order of the Board], as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its [members] member, agent, or agency, and to be made a part of the [transcript] record. \* \* \* [The] Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in [sections 239 and 240 of the Judicial Code, as amended [(U. S. C., title 28, secs. 346 and 347)] section 1254 of title 28.]"

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148): "A copy of such petition shall be forthwith [served upon] transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court [a transcript of] the [entire] record in the proceeding, certified by the Board [including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board] as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same [exclusive] jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive" (29 U. S. C., sec. 160, National Labor Relations Board).

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended: "A copy of such petition shall be forthwith [served upon]

*transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part"* (27 U. S. C., sec. 204, Secretary of the Treasury).

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part* (15 U. S. C., sec. 79x, Securities and Exchange Commission).

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended, (49 Stat. 860), last sentence: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at anytime, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*"

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860): "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part"* (16 U. S. C., sec. 825 1, Federal Power Commission).

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the [Board] Commission, or [upon] any officer thereof designated by the [Board] Commission for that purpose, and thereupon the [Board] Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order.*" (46 U. S. C., sec. 1181 (b), Federal Maritime Board (District of Columbia Circuit only) ).

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024):

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall



thereupon [certify and] file in the court [a transcript of] the record, if any, upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*" (49 U. S. C., sec. 646, Civil Aeronautics Board).

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), last sentence: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*"

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831): "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition [transcript] such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part*" (15 U. S. C., sec. 717r, Federal Power Commission).

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515):

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part.*"

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515):

"(3) In the case of a petition with respect to an order such subsection (1), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part*" (21 U. S. C., sec. 346a, Secretary of Health, Education, and Welfare, Secretary of Agriculture).

SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: *A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. [The summons and petition may be served at any place in the United States.] "The Secretary [promptly upon service of the summons and petition] thereupon shall [certify and] file in the court the [transcript] record of the proceedings [and*



the record] on which the Secretary based his order, *as provided in section 2112 of title 28, United States Code.*" (21 U. S. C., sec. 371, Secretary of Health, Education, and Welfare).

(b) The first sentence of paragraph 3 of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: "*Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.*"

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended: "A copy of such petition shall forthwith be [served upon] *transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner.*" (29 U. S. C., sec. 210, Secretary of Labor.)

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100): "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall [certify and] file with the court in which such petition has been filed [a transcript of] the record upon which the findings and decision complained of are based, *as provided in section 2112 of title 28, United States Code. Upon [such] the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter [upon the pleadings and transcript of the record,] a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court [a transcript of] the additional record*" (45 U. S. C., sec. 355, Railroad Retirement Board).

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 1599, Secretary of Agriculture).

(b) The second, third, and fourth paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288):

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon file in the court [a full and accurate transcript of] the record in such proceedings, [including*

the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code.* If before such [transcript] record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such [transcript] petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal."

"The evidence so taken or admitted [duly certified] and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." (7 U. S. C., sec. 1600, Secretary of Agriculture.)

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288):

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall [certify and] file [with its application a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, the report, and the order] *as provided in section 2112 of title 28, United States Code.* Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon the person against whom the order was issued" (7 U. S. C., sec. 1601, Secretary of Agriculture).

Sec. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part*" (15 U. S. C., sec. 80a-42, Securities and Exchange Commission).

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have [exclusive jurisdiction] *jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order,*



in whole or in part" (15 U. S. C., sec. 80b-13, Securities and Exchange Commission).

SEC. 27. (a) Paragraph (1) of subsection (b) of Section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located [the summons and notice of appeal may be served at any place in the United States] *by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall [forthwith certify and] thereupon file in the court the [transcript] record of the proceedings [and the record] on which he based his action, as provided in section 2112 of title 28, United States Code.*

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall [certify to] *file in the court the [transcript and] record of the further proceedings*" (42 U. S. C., sec. 291j, Public Health Service).

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927): "Within thirty days after the filing of said appeal the Secretary shall file with the court the [originals or certified copies of all papers and evidence presented to him upon the hearing involved, a like copy of his decision thereon, a full statement in writing of the facts and grounds for his decisions as found and given by him] *record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal*" (7 U. S. C., sec. 1115, Secretary of Agriculture (District of Columbia Circuit only)).

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Board, and thereupon the Board shall [certify and] file in the court [a transcript] of the [entire] record in the proceeding, [including all evidence taken and the report and order of the Board] as provided in section 2112 of title 28, United States Code. [Thereupon] Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides*" (50 U. S. C., sec. 793, Subversive Activities Control Board).



SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028):

“(e) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it” (50 U. S. C., sec. 820, Detention Review Board).

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028): “The Board shall thereupon file in the court [a duly certified transcript of] the [entire] record of the proceedings before the Board with respect to the matter concerning which judicial review is sought [including all evidence upon which the order complained of was entered, the findings and order of the Board] *as provided in section 2112 of title 28, United States Code.* \* \* \* [Thereupon] *Upon the filing of such petition* the court shall have jurisdiction of the proceeding, *which upon the filing of the record with it shall be exclusive*, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board” (50 U. S. C., sec. 821, Detention Review Board).

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029):

“(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the [transcript] *record*” (50 U. S. C., sec. 821, Detention Review Board).

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130):

“SEC. 6. [Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless] *Unless* the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk *of the court of appeals in which the proceeding is pending* the record on review, [duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing] *as provided in section 2112 of title 28, United States Code*” (5 U. S. C., sec. 1036, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131): “The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file [a certified transcript of] *in the court* such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order” (5 U. S. C., sec. 1037, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

SEC. 32. Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974) last three sentences: "*The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part.*"

SEC. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564):

"Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy [shall forthwith be transmitted to] *must be served on* the said designee *by the clerk of the court.* Within forty-five days [after receipt] *after service* of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court [the] *a transcript of the entire record of the proceedings with respect to such claim as provided in section 2112 of title 28, United States Code.*"

SEC. 34. The second and third sentences of section 9, of the Bank Holding Company Act of 1956 (70 Stat. 138):

"A copy of such petition shall be forthwith [transmitted to] *served upon* the Board, *by the clerk of the court* and thereupon the Board shall [file] *certify and file in the court a transcript of the record made before the Board as provided in section 2112 of title 28 United States Code. Upon the filing of the transcript the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper.*"

SEC. 35. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.



Union Calendar No. 311

85TH CONGRESS  
1ST SESSION

# H. R. 6788

[Report No. 842]

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 1957

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

JULY 23, 1957

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

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## A BILL

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

- 1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the analysis of chapter 133 of title 28 of the United  
4       States Code, immediately preceding section 2101 of such  
5       title, is amended by inserting at the end thereof the following  
6       additional item:

“2112. Record on review and enforcement of agency orders.”



1       “SEC. 2. Chapter 133 of title 28 of the United States  
2 Code is amended by inserting at the end of such chapter im-  
3 mediately following section 2111 an additional section, as  
4 follows:

5       “§ 2112. Record on review and enforcement of agency orders

6       “(a) The several courts of appeals shall have power  
7 to adopt, with the approval of the Judicial Conference of the  
8 United States, ~~rules~~ *rules, which so far as practicable shall be*  
9 *uniform in all such courts* prescribing the time and manner of  
10 filing and the contents of the record in all proceedings insti-  
11 tuted in the courts of appeals to enjoin, set aside, suspend,  
12 modify, or otherwise review or enforce orders of administrative  
13 agencies, boards, commissions, and officers, ~~in which~~ *to the ex-*  
14 *tent that the applicable statute does not specifically prescribe*  
15 *such time or manner of filing or contents of the record. Such*  
16 *rules may authorize the agency, board, commission, or officer*  
17 *to file in the court a certified list of the materials comprising*  
18 *the record and retain and hold for the court all such materials*  
19 *and transmit the same or any part thereof to the court, when*  
20 *and as required by it, at any time prior to the final determi-*  
21 *nation of the proceeding, and such filing of such certified list*  
22 *of the materials comprising the record and such subsequent*  
23 *transmittal of any such materials when and as required shall*  
24 *be deemed full compliance with any provision of law requir-*  
25 *ing the filing of the record in the court. The record in such*

1 proceedings shall be certified and filed in or held for *and*  
2 *transmitted to* the court of appeals by the agency, board,  
3 commission, or officer concerned within the time and in the  
4 manner prescribed by such rules. If proceedings have been  
5 instituted in two or more courts of appeals with respect to the  
6 same order the agency, board, commission, or officer con-  
7 cerned shall file the record in that one of such courts in which  
8 ~~in its judgment the proceedings may be carried on with the~~  
9 ~~greatest convenience to all the parties involved a proceeding~~  
10 *with respect to such order was first instituted.* The other  
11 courts in which such proceedings are pending shall thereupon  
12 transfer them to the court of appeals in which the record has  
13 been filed. *For the convenience of the parties in the interest of*  
14 *justice such court may thereafter transfer all the proceedings*  
15 *with respect to such order to any other court of appeals.*

16 “(b) The record to be filed in the court of appeals in  
17 such a proceeding shall consist of the order sought to be re-  
18 viewed or enforced, the findings or report upon which it is  
19 based, and the pleadings, evidence, and proceedings before  
20 the agency, board, commission, or officer concerned, or such  
21 portions thereof (1) as the said rules of the court of appeals  
22 may require to be included therein, or (2) as the agency,  
23 board, commission, or officer concerned, the petitioner for  
24 review or respondent in enforcement, as the case may be,  
25 and any intervenor in the court proceeding by written stip-

1    stipulation filed with the agency, board, commission, or officer  
2    concerned or in the court in any such proceeding may con-  
3    sistently with the rules of such court designate to be included  
4    therein, or (3) as the court upon motion of a party or, after  
5    a prehearing conference, upon its own motion may by order  
6    in any such proceeding designate to be included therein.  
7    Such a stipulation or order may provide in an appropriate case  
8    that no record need be filed in the court of appeals. If, how-  
9    ever, the correctness of a finding of fact by the agency, board,  
10   commission, or officer is in question all of the evidence before  
11   the agency, board, commission, or officer shall be included in  
12   the record except such as the agency, board, commission, or  
13   officer concerned, the petitioner for review or respondent in  
14   enforcement, as the case may be, and any intervenor in the  
15   court proceeding by written stipulation filed with the agency,  
16   board, commission, or officer concerned or in the court agree  
17   to omit as wholly immaterial to the questioned finding. If  
18   there is omitted from the record any portion of the proceed-  
19   ings before the agency, board, commission, or officer which  
20   the court subsequently determines to be ~~necessary~~ *proper* for  
21   it to consider to enable it to review or enforce the order in  
22   question the court may direct that such additional portion  
23   of the proceedings be filed as a supplement to the record.  
24   ~~If the rules of the court of appeals in which a proceeding~~  
25   ~~is pending do not require the printing of the entire record~~



1 in that court the *The* agency, board, commission, or officer  
2 concerned may, at its option and without regard to the fore-  
3 going provisions of this subsection, *and if so requested by*  
4 *the petitioner for review or respondent in enforcement shall,*  
5 file in the court the entire record of the proceedings before  
6 it without abbreviation.

7 “(c) The agency, board, commission, or officer con-  
8 cerned may transmit to the court of appeals the original  
9 papers comprising the whole or any part of the record or  
10 any supplemental record, otherwise true copies of such papers  
11 certified by an authorized officer or deputy of the agency,  
12 board, commission, or officer concerned shall be transmitted.  
13 Any original papers thus transmitted to the court of appeals  
14 shall be returned to the agency, board, commission, or officer  
15 concerned upon the final determination of the review or  
16 enforcement proceeding. Pending such final determination  
17 any such papers may be returned by the court temporarily to  
18 the custody of the agency, board, commission, or officer con-  
19 cerned if needed for the transaction of the public business.  
20 Certified copies of any papers included in the record or any  
21 supplemental record may also be returned to the agency,  
22 board, commission, or officer concerned upon the final deter-  
23 mination of review ~~proceedings.~~ *or enforcement proceedings.*

24 “(d) *The provisions of this section are not applicable to*  
25 *proceedings to review decisions of the Tax Court of the United*

1 *States or to proceedings to review or enforce those orders of*  
2 *administrative agencies, boards, commissions, or officers which*  
3 *are by law reviewable or enforceable by the district courts.”*

4       SEC. 3. (a) The sixth sentence of subsection (b) of  
5 section 5 of the Federal Trade Commission Act, as amended  
6 (52 Stat. 112), is amended to read as follows: “Until the  
7 expiration of the time allowed for filing a petition for review,  
8 if no such petition has been duly filed within such time, or, if  
9 a petition for review has been filed within such time then  
10 until the record in the proceeding has been filed in a court  
11 of appeals of the United States, as hereinafter provided, the  
12 Commission may at any time, upon such notice and in such  
13 manner as it shall deem proper, modify or set aside, in whole  
14 or in part, any report or any order made or issued by it  
15 under this section.”

16       (b) The second and third sentences of subsection (c)  
17 of section 5 of the Federal Trade Commission Act, as  
18 amended (52 Stat. 112–113), are amended to read as fol-  
19 lows: “A copy of such petition shall be forthwith trans-  
20 mitted by the clerk of the court to the Commission, and  
21 thereupon the Commission shall file in the court the record  
22 in the proceeding, as provided in section 2112 of title 28,  
23 United States Code. Upon such filing of the petition the  
24 court shall have jurisdiction of the proceeding and of the

1 question determined therein *concurrently with the Commis-*  
2 *sion until the filing of the record* and shall have power to  
3 make and enter a decree affirming, modifying, or setting  
4 aside the order of the Commission, and enforcing the same  
5 to the extent that such order is affirmed and to issue such  
6 writs as are ancillary to its jurisdiction or are necessary in  
7 its judgment to prevent injury to the public or to com-  
8 petitors *pendente lite*.”

9 (c) Subsection (d) of section 5 of the Federal Trade  
10 Commission Act, as amended (52 Stat. 113), is amended  
11 to read as follows:

12 “(d) Upon the filing of the record with it the jurisdic-  
13 tion of the court of appeals of the United States to affirm,  
14 enforce, modify, or set aside orders of the Commission shall  
15 be exclusive.”

16 SEC. 4. (a) The sixth sentence of the second paragraph  
17 of section 11 of the Act of October 15, 1914, as amended  
18 (64 Stat. 1127), is amended to read as follows: “Until the  
19 record in such hearing shall have been filed in a United  
20 States court of appeals, as hereinafter provided, the Commis-  
21 sion or Board may at any time, upon such notice, and in such  
22 manner as it shall deem proper, modify or set aside, in whole  
23 or in part, any report or any order made or issued by it  
24 under this section.”



1 (b) The first and second sentences of the third para-  
2 graph of section 11 of the Act of October 15, 1914, as  
3 amended (64 Stat. 1127), are amended to read as follows:

4 "If such person fails or neglects to obey such order of the  
5 Commission or Board while the same is in effect, the Com-  
6 mission or Board may apply to the United States court of  
7 appeals, within any circuit where the violation complained  
8 of was or is being committed or where such person resides  
9 or carries on business, for the enforcement of its order, and  
10 shall file the record in the proceeding, as provided in section  
11 2112 of title 28, United States Code. Upon such filing of  
12 the application the court shall cause notice thereof to be  
13 served upon such person, and thereupon shall have jurisdic-  
14 tion of the proceeding and of the question determined therein  
15 *concurrently with the Commission or Board until the filing*  
16 *of the record*, and shall have power to make and enter a  
17 decree affirming, modifying, or setting aside the order of  
18 the Commission or Board."

19 (c) The second and third sentences of the fourth para-  
20 graph of section 11 of the Act of October 15, 1914, as  
21 amended (64 Stat. 1128), are amended to read as follows:  
22 "A copy of such petition shall be forthwith transmitted by  
23 the clerk of the court to the Commission or Board and  
24 thereupon the Commission or Board shall file in the court

1 the record in the proceeding, as provided in section 2112  
2 of title 28, United States Code. Upon the filing of such  
3 petition the court shall have the same jurisdiction to affirm,  
4 set aside, or modify the order of the Commission or Board  
5 as in the case of an application by the Commission or Board  
6 for the enforcement of its order, and the findings of the  
7 Commission or Board as to the facts, if supported by sub-  
8 stantial evidence, determined as provided in section 10 (e)  
9 of the Administrative Procedure Act, shall in like manner  
10 be conclusive.”

11 (d) The fifth paragraph of section 11 of the Act of  
12 October 15, 1914, as amended (64 Stat. 1128), is amended  
13 to read as follows:

14 “Upon the filing of the record with it the jurisdiction  
15 of the United States court of appeals to enforce, set aside,  
16 or modify orders of the Commission or Board shall be  
17 exclusive.”

18 SEC. 5. The fourth and fifth sentences of the first para-  
19 graph of section 2 of the Act of July 28, 1916 (39 Stat.  
20 425), are amended to read as follows: “A copy of such  
21 petition shall be forthwith transmitted by the clerk of the  
22 court to the Post Office Department and thereupon the said  
23 Department shall file in the court the record, as provided

1 in section 2112 of title 28, United States Code. Upon the  
2 filing of such petition the court shall have jurisdiction to  
3 affirm, set aside or modify the order of the Department.”

4 SEC. 6. (a) Subsection (c) of section 203 of the  
5 Packers and Stockyards Act, 1921 (42 Stat. 162), is  
6 amended to read as follows:

7 “(c) Until the record in such hearing has been filed  
8 in a court of appeals of the United States, as provided in  
9 section 204, the Secretary at any time, upon such notice  
10 and in such manner as he deems proper, but only after  
11 reasonable opportunity to the packer to be heard, may  
12 amend or set aside the report or order, in whole or in part.”

13 (b) Subsections ~~(b)~~ and ~~(e)~~ (b), (c), and (d) of  
14 section 204 of the Packers and Stockyards Act, 1921 (42  
15 Stat. 162), are amended to read as follows:

16 “(b) The clerk of the court shall immediately cause  
17 a copy of the petition to be delivered to the Secretary, and  
18 the Secretary shall thereupon file in the court the record  
19 in such proceedings, as provided in section 2112 of title 28,  
20 United States Code. If before such record is filed the  
21 Secretary amends or sets aside his report or order, in whole  
22 or in part, the petitioner may amend the petition within such  
23 time as the court may determine, on notice to the Secretary.

24 “(c) At any time after such petition is filed, the court,  
25 on application of the Secretary, may issue a temporary



1 injunction, restraining, to the extent it deems proper, the  
 2 packer and his officers, directors, agents, and employees,  
 3 from violating any of the provisions of the order pending  
 4 the final determination of the ~~appeal.~~ *appeal.*

5 “(d) *The evidence so taken or admitted, and filed as*  
 6 *aforesaid as a part of the record, shall be considered by the*  
 7 *court as the evidence in the case. The proceedings in such*  
 8 *cases in the court of appeals shall be made a preferred cause*  
 9 *and shall be expedited in every way.*”

10 (c) The first sentence of subsection (h) of section 204  
 11 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is  
 12 amended to read as follows:

13 “(h) The court of appeals shall have jurisdiction, which  
 14 upon the filing of the record with it shall be exclusive, to re-  
 15 view, and to affirm, set aside, or modify, such orders of the  
 16 Secretary, and the decree of such court shall be final except  
 17 that it shall be subject to review by the Supreme Court of the  
 18 United States upon certiorari, as provided in section 1254 of  
 19 title 28, if such writ is duly applied for within sixty days  
 20 after entry of the decree.”

21 SEC. 7. (a) The ~~third sentence~~ *third and fourth sen-*  
 22 *tences* of paragraph (a) of section 6 of the Commodity  
 23 Exchange Act (42 Stat. 1001), ~~is~~ *are* amended to read  
 24 as follows: “The clerk of the court in which such a petition  
 25 is filed shall immediately cause a copy thereof to be de-

1   livered to the Secretary of Agriculture, Chairman of said  
2   Commission, or any member thereof, and the said Com-  
3   mission shall thereupon file in the court the record in such  
4   proceedings, as provided in section 2112 of title 28, United  
5   States Code. *The testimony and evidence taken or submitted*  
6   *before the said Commission, duly filed as aforesaid as a part*  
7   *of the record, shall be considered by the court as the evidence*  
8   *in the case."*

9       (b) The seventh and eighth sentences of paragraph (b)  
10   of section 6 of the Commodity Exchange Act (42 Stat.  
11   1002), as amended, are amended to read as follows: "A  
12   copy of such petition shall be forthwith transmitted by the  
13   clerk of the court to the Secretary of Agriculture and there-  
14   upon the Secretary of Agriculture shall file in the court the  
15   record theretofore made, as provided in section 2112 of title  
16   28, United States Code. Upon the filing of the petition the  
17   court shall have jurisdiction to affirm, to set aside, or modify  
18   the order of the Secretary of Agriculture, and the findings of  
19   the Secretary of Agriculture as to the facts, if supported by  
20   the weight of evidence, shall in like manner be conclusive."

21       SEC. 8. The third and fourth sentences of the second  
22   paragraph of subsection (b) of section 641 of the Tariff Act  
23   of 1930, as amended (49 Stat. 865), are amended to read  
24   as follows: "A copy of such petition shall be forthwith

1 transmitted by the clerk of the court to the Secretary of the  
2 Treasury, or any officer designated by him for that purpose,  
3 and thereupon the Secretary of the Treasury shall file in the  
4 court the record upon which the order complained of was  
5 entered, as provided in section 2112 of title 28, United  
6 States Code. Upon the filing of such petition such court  
7 shall have exclusive jurisdiction to affirm, modify, or set  
8 aside such order, in whole or in part.”

9 SEC. 9. The second sentence of subsection (a) of section  
10 9 of the Securities Act of 1933 (48 Stat. 80) is amended  
11 to read as follows: “A copy of such petition shall be forth-  
12 with transmitted by the clerk of the court to the Commission,  
13 and thereupon the Commission shall file in the court the  
14 record upon which the order complained of was entered, as  
15 provided in section 2112 of title 28, United States Code.”

16 SEC. 10. The second and third sentences of subsection  
17 (a) of section 25 of the Securities Exchange Act of 1934  
18 (48 Stat. 901) are amended to read as follows: “A copy  
19 of such petition shall be forthwith transmitted by the clerk  
20 of the court to any member of the Commission, and there-  
21 upon the Commission shall file in the court the record upon  
22 which the order complained of was entered, as provided in  
23 section 2112 of title 28, United States Code. Upon the  
24 filing of such petition such court shall have exclusive juris-



1 ~~dition~~ jurisdiction, which upon the filing of the record shall  
2 be exclusive, to affirm, modify, and enforce or set aside such  
3 order, in whole or in part.”

4 SEC. 11. The third sentence of subsection (c) of sec-  
5 tion 18 of the Act of June 18, 1934 (48 Stat. 1002), is  
6 amended to read as follows: “The clerk of the court in which  
7 such a petition is filed shall immediately cause a copy thereof  
8 to be delivered to the Board and it shall thereupon file in the  
9 court the record in the proceedings held before it under  
10 this section, as provided in section 2112 of title 28, United  
11 States Code.”

12 SEC. 12. The second sentence of subsection (d) of sec-  
13 tion 402 of the Communications Act of 1934, as amended  
14 (66 Stat. 719), is amended to read as follows: “Within  
15 thirty days after the filing of an appeal, the Commission  
16 shall file with the court the record upon which the order  
17 complained of was entered, as provided in section 2112 of  
18 title 28, United States Code.”

19 SEC. 13. (a) Subsection (d) of section 10 of the Na-  
20 tional Labor Relations Act, as amended (61 Stat. 147),  
21 is amended to read as follows:

22 “(d) Until the record in a case shall have been filed in  
23 a court, as hereinafter provided, the Board may at any time  
24 upon reasonable notice and in such manner as it shall deem

1 proper, modify or set aside, in whole or in part, any finding  
2 or order made or issued by it.”

3 (b) The first, second, fifth and seventh sentences of  
4 subsection (e) of section 10 of the National Labor Relations  
5 Act, as amended (61 Stat. 147), are amended to read as  
6 follows:

7 “(e) The Board shall have power to petition any court  
8 of appeals of the United States, or if all the courts of appeals  
9 to which application may be made are in vacation, any dis-  
10 trict court of the United States, within any circuit or dis-  
11 trict, respectively, wherein the unfair labor practice in ques-  
12 tion occurred or wherein such person resides or transacts  
13 business, for the enforcement of such order and for appro-  
14 priate temporary relief or restraining order, and shall file in  
15 the court the record in the proceedings, as provided in  
16 section 2112 of title 28, United States Code. Upon the  
17 filing of such petition, the court shall cause notice thereof  
18 to be served upon such person, and thereupon shall have  
19 jurisdiction of the proceeding and of the question determined  
20 therein, and shall have power to grant such temporary relief  
21 or restraining order as it deems just and proper, and to make  
22 and enter a decree enforcing, modifying, and enforcing as  
23 so modified, or setting aside in whole or in part the order  
24 of the Board. \* \* \* If either party shall apply to the

1 court for leave to adduce additional evidence and shall show  
2 to the satisfaction of the court that such additional evidence  
3 is material and that there were reasonable grounds for the  
4 failure to adduce such evidence in the hearing before the  
5 Board, its ~~members~~ *member*, agent, or agency, the court may  
6 order such additional evidence to be taken before the Board,  
7 its ~~members~~ *member*, agent, or agency, and to be made a part  
8 of the record. \* \* \* Upon the filing of the record with it the  
9 jurisdiction of the court shall be exclusive and its judgment  
10 and decree shall be final, except that the same shall be  
11 subject to review by the appropriate United States court  
12 of appeals if application was made to the district court as  
13 hereinabove provided, and by the Supreme Court of the  
14 United States upon writ of certiorari or certification as pro-  
15 vided in section 1254 of title 28.”

16 (c) The second and third sentences of subsection (f) of  
17 section 10 of the National Labor Relations Act, as amended  
18 (61 Stat. 148), are amended to read as follows: “A copy of  
19 such petition shall be forthwith transmitted by the clerk of  
20 the court to the Board, and thereupon the aggrieved party  
21 shall file in the court the record in the proceeding, certified  
22 by the Board, as provided in section 2112 of title 28, United  
23 States Code. Upon the filing of such petition, the court shall  
24 proceed in the same manner as in the case of an application  
25 by the Board under subsection (e) of this section, and shall



1 have the same jurisdiction to grant to the Board such tem-  
2 porary relief or restraining order as it deems just and proper,  
3 and in like manner to make and enter a decree enforcing,  
4 modifying, and enforcing as so modified, or setting aside in  
5 whole or in part the order of the Board; the findings of the  
6 Board with respect to questions of fact if supported by sub-  
7 stantial evidence on the record considered as a whole shall in  
8 like manner be conclusive.”

9 SEC. 14. The third and fourth sentences of subsection  
10 (h) of section 4 of the Federal Alcohol Administration Act  
11 (49 Stat. 980) , as amended, are amended to read as follows:  
12 “A copy of such petition shall be forthwith transmitted by  
13 the clerk of the court to the Secretary, or any officer desig-  
14 nated by him for that purpose, and thereupon the Secretary  
15 shall file in the court the record upon which the order com-  
16 plained of was entered, as provided in section 2112 of title  
17 28, United States Code. Upon the filing of such petition  
18 such court shall have exclusive jurisdiction to affirm, modify,  
19 or set aside such order, in whole or in part.”

20 SEC. 15. The second and third sentences of subsection  
21 (a) of section 24 of the Public Utility Holding Company  
22 Act of 1935 (49 Stat. 834) , are amended to read as follows:  
23 “A copy of such petition shall be forthwith transmitted by  
24 the clerk of the court to any member of the Commission,

1 or any officer thereof designated by the Commission for that  
2 purpose, and thereupon the Commission shall file in the  
3 court the record upon which the order complained of was  
4 entered, as provided in section 2112 of title 28, United  
5 States Code. Upon the filing of such petition such court  
6 shall have ~~exclusive jurisdiction~~ *jurisdiction, which upon the*  
7 *filing of the record shall be exclusive*, to affirm, modify, or set  
8 aside such order, in whole or in part.”

9 SEC. 16. (a) Subsection (a) of section 313 of the  
10 Federal Power Act, as amended (49 Stat. 860), is amended  
11 by inserting at the end thereof an additional sentence read-  
12 ing as follows: “Until the record in a proceeding shall have  
13 been filed in a court of appeals, as provided in subsection  
14 (b), the Commission may at any time, upon reasonable  
15 notice and in such manner as it shall deem proper, modify  
16 or set aside, in whole or in part, any ~~find~~ *finding* or order  
17 made or issued by it *under the provisions of this Act.*”

18 (b) The second and third sentences of subsection (b)  
19 of section 313 of the Federal Power Act, as amended (49  
20 Stat. 860), are amended to read as follows: “A copy of such  
21 petition shall forthwith be transmitted by the clerk of the  
22 court to any member of the Commission and thereupon the  
23 Commission shall file with the court the record upon which  
24 the order complained of was entered, as provided in section  
25 2112 of title 28, United States Code. Upon the filing of

1 such petition such court shall have jurisdiction, which upon  
2 the filing of the record with it shall be exclusive, to affirm,  
3 modify, or set aside such order in whole or in part.”

4 SEC. 17. The second and third sentences of subsection  
5 (b) of section 611 of the Merchant Marine Act, 1936, as  
6 amended (52 Stat. 961), are amended to read as follows:  
7 “A copy of such petition shall be forthwith transmitted by  
8 the clerk of the court to any member of the ~~Board~~ *Commis-*  
9 *sion*, or any officer thereof designated by the ~~Board~~ *Commis-*  
10 *sion* for that purpose, and thereupon the ~~Board~~ *Commission*  
11 shall file in the court the record upon which the order  
12 complained of was entered, as provided in section 2112  
13 of title 28, United States Code. Upon the filing of  
14 such petition such court shall have exclusive jurisdiction  
15 to determine whether such cancellation or default was with-  
16 out just cause, and to affirm or set aside such order.”

17 SEC. 18. Subsection (c) of section 1006 of the Civil  
18 Aeronautics Act of 1938 (52 Stat. 1024), is amended to  
19 read as follows:

20 “(c) A copy of the petition shall, upon filing, be forth-  
21 with transmitted to the Board by the clerk of the court;  
22 and the Board shall thereupon file in the court the record,  
23 if any, upon which the order complained of was entered, as  
24 provided in section 2112 of title 28, United States Code.”

25 SEC. 19. (a) Subsection (a) of section 19 of the



1 Natural Gas Act (52 Stat. 831), is amended by inserting  
2 at the end thereof an additional sentence reading as follows:  
3 “Until the record in a proceeding shall have been filed in  
4 a court of appeals, as provided in subsection (b), the Com-  
5 mission may at any time, upon reasonable notice and in  
6 such manner as it shall deem proper, modify or set aside,  
7 in whole or in part, any finding or order made or issued  
8 by it *under the provisions of this Act.*”

9 (b) The second and third sentences of subsection (b)  
10 of section 19 of the Natural Gas Act (52 Stat. 831), are  
11 amended to read as follows: “A copy of such petition shall  
12 forthwith be transmitted by the clerk of the court to any  
13 member of the Commission and thereupon the Commission  
14 shall file with the court the record upon which the order  
15 complained of was entered, as provided in section 2112 of  
16 title 28, United States Code. Upon the filing of such peti-  
17 tion such court shall have jurisdiction, which upon the filing  
18 of the record with it shall be exclusive, to affirm, modify,  
19 or set aside such order in whole or in part.”

20 SEC. 20. (a) The first and second sentences of para-  
21 graph (2) of subsection (i) of section 408 of the Federal  
22 Food, Drug, and Cosmetic Act, as added by the Act of  
23 July 22, 1954 (ch. 559, 68 Stat. 515), are amended to  
24 read as follows:

25 “(2) In the case of a petition with respect to an

1 order under subsection (d) (5) or (e), a copy of the  
2 petition shall be forthwith transmitted by the clerk of the  
3 court to the Secretary, or any officer designated by him  
4 for that purpose, and thereupon the Secretary shall file in  
5 *the court* the record of the proceedings on which he based  
6 his order, as provided in section 2112 of title 28, United  
7 States Code. Upon the filing of such petition, the court shall  
8 have exclusive jurisdiction to affirm or set aside the order  
9 complained of in whole or in part.”

10 (b) The first and second sentences of paragraph (3)  
11 of subsection (i) of section 408 of the Federal Food, Drug,  
12 and Cosmetic Act, as added by the Act of July 22, 1954  
13 (ch. 559, 68 Stat. 515), are amended to read as follows:

14 “(3) In the case of a petition with respect to an order  
15 under subsection ~~(1)~~ (l), a copy of the petition shall be forth-  
16 with transmitted by the clerk of the court to the Secretary  
17 of Agriculture, or any officer designated by him for that  
18 purpose, and thereupon the Secretary shall file in the court  
19 the record of the proceedings on which he based his order,  
20 as provided in section 2112 of title 28, United States Code.  
21 Upon the filing of such petition, the court shall have ex-  
22 clusive jurisdiction to affirm or set aside the order com-  
23 plained of in whole or in part.”

24 SEC. 21. ~~The third sentence~~ (a) *The second and third*  
25 *sentences* of paragraph (1) of subsection (f) of section 701

1 of the Federal Food, Drug, and Cosmetic Act (52 Stat.  
 2 1055), as amended, ~~is~~ *are* amended to read as follows: “A  
 3 *copy of the petition shall be forthwith transmitted by the*  
 4 *clerk of the court to the Secretary or other officer designated*  
 5 *by him for that purpose.* ~~“The~~ *The* Secretary thereupon  
 6 shall file in the court the record of the proceedings on which  
 7 the Secretary based his order, as provided in section 2112 of  
 8 title 28, United States Code.”

9       *(b) The first sentence of paragraph (3) of subsection*  
 10 *(f) of section 701 of the Federal Food, Drug, and Cosmetic*  
 11 *Act (52 Stat. 1055), as amended, is amended to read as*  
 12 *follows: “Upon the filing of the petition referred to in para-*  
 13 *graph (1) of this subsection, the court shall have jurisdiction*  
 14 *to affirm the order, or to set it aside in whole or in part,*  
 15 *temporarily or permanently.”*

16       SEC. 22. The second and third sentences of subsection  
 17 (a) of section 10 of the Fair Labor Standards Act of 1938  
 18 (52 Stat. 1065), as amended, are amended to read as fol-  
 19 lows: “A copy of such petition shall forthwith be transmit-  
 20 ted by the clerk of the court to the Secretary, and thereupon  
 21 the Secretary shall file in the court the record of the indus-  
 22 try committee upon which the order complained of was en-  
 23 tered, as provided in section 2112 of title 28, United States  
 24 Code. Upon the filing of such petition such court shall  
 25 have exclusive jurisdiction to affirm, modify, or set aside



1 such order in whole or in part, so far as it is applicable to  
2 the petitioner.”

3 SEC. 23. The fourth, fifth, sixth, and eighth sentences of  
4 subsection (f) of section 5 of the Railroad Unemployment  
5 Insurance Act, as amended (52 Stat. 1100), are amended  
6 to read as follows: “Within fifteen days after receipt of  
7 service, or within such additional time as the court may al-  
8 low, the Board shall file with the court in which such peti-  
9 tion has been filed the record upon which the findings and  
10 decision complained of are based, as provided in section 2112  
11 of title 28, United States Code. Upon the filing of such  
12 petition the court shall have exclusive jurisdiction of the  
13 proceeding and of the question determined therein, and shall  
14 give precedence in the adjudication thereof over all other  
15 civil cases not otherwise entitled by law to precedence. It  
16 shall have power to enter a decree affirming, modifying, or  
17 reversing the decision of the Board, with or without remand-  
18 ing the cause for rehearing. \* \* \* No additional evidence  
19 shall be received by the court, but the court may order  
20 additional evidence to be taken before the Board, and the  
21 Board may, after hearing such additional evidence, modify  
22 its findings of fact and conclusions and file such additional or  
23 modified findings and conclusions with the court, and the  
24 Board shall file with the court the additional record.”

25 SEC. 24. (a) Subsection (c) of section 409 of the Fed-

1 eral Seed Act (53 Stat. 1287), is amended to read as  
2 follows:

3 “(c) Until the record in such hearing has been filed in  
4 a court of appeals as provided in section 410, the Secretary  
5 of Agriculture at any time, upon such notice and in such  
6 manner as he deems proper, but only after reasonable oppor-  
7 tunity to the person to be heard, may amend or set aside the  
8 report or order, in whole or in a part.”

9 (b) The ~~second and third~~ *second, third and fourth*  
10 paragraphs of section 410 of the Federal Seed Act (53 Stat.  
11 1288), are amended to read as follows:

12 “The clerk of the court shall immediately cause a copy  
13 of the petition to be delivered to the Secretary, and the Sec-  
14 retary shall thereupon file in the court the record in such  
15 proceedings, as provided in section 2112 of title 28, United  
16 States Code. If before such record is filed, the Secretary  
17 amends or sets aside his report or order, in whole or in part,  
18 the petitioner may amend the petition within such time as  
19 the court may determine, on notice to the Secretary.

20 “At any time after such petition is filed the court, on  
21 application of the Secretary, may issue a temporary injunc-  
22 tion restraining, to the extent it deems proper, the person  
23 and his officers, directors, agents, and employees from vio-  
24 lating any of the provisions of the order pending the final  
25 determination of the ~~appeal.~~ *appeal.*”

1       *“The evidence so taken or admitted and filed as afore-*  
2 *said as a part of the record, shall be considered by the court*  
3 *as the evidenc in the case. The proceedings in such cases in*  
4 *the court of appeals shall be made a preferred cause and shall*  
5 *be expedited in every way.”*

6       (c) The first and second sentences of section 411 of  
7 the Federal Seed Act (53 Stat. 1288), are amended to  
8 read as follows:

9       “SEC. 411. If any person against whom an order is  
10 issued under section 409 fails to obey the order, the Secretary  
11 of Agriculture, or the United States, by its Attorney General,  
12 may apply to the court of appeals of the United States,  
13 within the circuit where the person against whom the order  
14 was issued resides or has his principal place of business, for  
15 the enforcement of the order, and shall file the record in such  
16 proceedings, as provided in section 2112 of title 28, United  
17 States Code. Upon such filing of the application the court  
18 shall cause notice thereof to be served upon the person  
19 against whom the order was issued.”

20       SEC. 25. The second and third sentences of subsection  
21 (a) of section 43 of the Investment Company Act of 1940,  
22 as amended (54 Stat. 844), are amended to read as follows:

23       “A copy of such petition shall be forthwith transmitted by  
24 the clerk of the court to any member of the Commission  
25 or any officer thereof designated by the Commission for



1 that purpose, and thereupon the Commission shall file in the  
2 court the record upon which the order complained of was  
3 entered, as provided in section 2112 of title 28, United  
4 States Code. Upon the filing of such petition such court  
5 shall have ~~exclusive jurisdiction~~ *jurisdiction, which upon the*  
6 *filing of the record shall be exclusive*, to affirm, modify, or  
7 set aside such order, in whole or in part.”

8 SEC. 26. The second and third sentences of subsection  
9 (a) of section 213 of the Investment Advisers Act of 1940,  
10 as amended (54 Stat. 855), are amended to read as follows:  
11 “A copy of such petition shall be forthwith transmitted by  
12 the clerk of the court to any member of the Commission, or  
13 any officer thereof designated by the Commission for that  
14 purpose, and thereupon the Commission shall file in the court  
15 the record upon which the order complained of was entered,  
16 as provided in section 2112 of title 28, United States Code.  
17 Upon the filing of such petition such court shall have ~~ex-~~  
18 ~~clusive jurisdiction~~ *jurisdiction, which upon the filing of the*  
19 *record shall be exclusive*, to affirm, modify, or set aside such  
20 order, in whole or in part.”

21 SEC. 27. (a) ~~The third sentence of paragraph~~ *Para-*  
22 *graph* (1) of subsection (b) of section 632 of the Act of  
23 July 1, 1944, as added by the Hospital Survey and Con-  
24 struction Act (60 Stat. 1048), is amended to read as follows:

1       “(b) (1) *If the Surgeon General refuses to approve*  
2 *any application under section 625 or section 654, the State*  
3 *agency through which the application was submitted, or if*  
4 *any State is dissatisfied with the Surgeon General's action*  
5 *under subsection (a) of this section, such State may appeal*  
6 *to the United States court of appeals for the circuit in which*  
7 *such State is located by filing with such court a notice of*  
8 *appeal. The jurisdiction of the court shall attach upon the*  
9 *filing of such notice. A copy of the notice of appeal shall be*  
10 *forthwith transmitted by the clerk of the court to the Sur-*  
11 *geon General, or any officer designated by him for that pur-*  
12 *pose. “The The Surgeon General shall thereupon file in the*  
13 *court the record of the proceedings on which he based his*  
14 *action, as provided in section 2112 of title 28, United States*  
15 *Code.”*

16       (b) The first sentence of paragraph (2) of subsection  
17 (b) of section 632 of the Act of July 1, 1944, as added by  
18 the Hospital Survey and Construction Act (60 Stat. 1048),  
19 is amended to read as follows:

20       “(2) The findings of fact by the Surgeon General, un-  
21 less substantially contrary to the weight of the evidence, shall  
22 be conclusive; but the court, for good cause shown, may re-  
23 mand the case to the Surgeon General to take further evi-  
24 dence, and the Surgeon General may thereupon make new or

1 modified findings of fact and may modify his previous action,  
2 and shall file in the court the record of the further pro-  
3 ceedings.”

4 SEC. 28. The fourth sentence of subsection (c) of sec-  
5 tion 205 of the Sugar Act of 1948 (61 Stat. 927), is  
6 amended to read as follows: “Within thirty days after the  
7 filing of said appeal the Secretary shall file with the court  
8 the record upon which the decision complained of was  
9 entered, as provided in section 2112 of title 28, United  
10 States Code, and a list of all interested persons to whom  
11 he has mailed or otherwise delivered a copy of said notice  
12 of appeal.”.

13 SEC. 29. The second and third sentences of subsection  
14 (a) of section 14 of the Internal Security Act of 1950 (64  
15 Stat. 1001), are amended to read as follows: “A copy of  
16 such petition shall be forthwith transmitted by the clerk of  
17 the court to the Board, and thereupon the Board shall file  
18 in the court the record in the proceeding, as provided in  
19 section 2112 of title 28, United States Code. Upon the  
20 filing of such petition the court shall have jurisdiction of the  
21 proceeding and shall have power to affirm or set aside the  
22 order of the Board; but the court may in its discretion and  
23 upon its own motion transfer any action so commenced to  
24 the United States Court of Appeals for the circuit wherein  
25 the petitioner resides.”.



1 SEC. 30. (a) Subsection (e) of section 110 of the  
2 Internal Security Act of 1950 (64 Stat. 1028), is amended  
3 to read as follows:

4 “(e) Until the record in a case shall have been filed  
5 in a court, as hereinafter provided, the Board may at any  
6 time, upon reasonable notice and in such manner as it  
7 shall deem proper, modify or set aside, in whole or in  
8 part, any finding or order made or issued by it.”

9 (b) The third and fifth sentences of subsection (c) of  
10 section 111 of the Internal Security Act of 1950 (64 Stat.  
11 1028), are amended to read as follows: “The Board shall  
12 thereupon file in the court the record of the proceedings  
13 before the Board with respect to the matter concerning which  
14 judicial review is sought, as provided in section 2112 of  
15 title 28, United States Code. \* \* \* Upon the filing of such  
16 petition the court shall have jurisdiction of the proceeding,  
17 which upon the filing of the record with it shall be exclusive,  
18 and shall have power to affirm, modify, or set aside, or to  
19 enforce or enforce as modified the order of the Board.”

20 (c) The first sentence of subsection (d) of section 111  
21 of the Internal Security Act of 1950 (60 Stat. 1029), is  
22 amended to read as follows:

23 “(d) If either party shall apply to the court for leave  
24 to adduce additional evidence and shall show to the satis-  
25 faction of the court that such additional evidence is material

1 and that there were reasonable grounds for the failure to  
2 adduce such evidence in the hearing before the Board or  
3 its hearing examiner, the court may order such additional  
4 evidence to be taken before the Board or its hearing examiner  
5 and to be made a part of the record.”

6 SEC. 31. (a) Section 6 of the Act of December 29,  
7 1950 (64 Stat. 1130), is amended to read as follows:

8 “SEC. 6. Unless the proceeding has been terminated  
9 on a motion to dismiss the petition, the agency shall file in  
10 the office of the clerk of the court of appeals in which the  
11 proceeding is pending the record on review, as provided in  
12 section 2112 of title 28, United States Code.”

13 (b) The second sentence of subsection (c) of section 7  
14 of the Act of December 29, 1950 (64 Stat. 1131), is  
15 amended to read as follows: “The agency may modify its  
16 findings of fact, or make new findings, by reason of the  
17 additional evidence so taken and may modify or set aside  
18 its order and shall file in the court such additional evidence,  
19 such modified findings or new findings, and such modified  
20 order or the order setting aside the original order.”.

21 SEC. 32. The second and third sentences of subsection  
22 ~~(b)~~ of section 208 of the Federal Coal Mine Safety Act,  
23 as amended ~~(66 Stat. 702)~~, are amended to read as follows:  
24 “Upon receipt of such copy of a notice of appeal the Board

1 shall file in such court the record upon which the order com-  
2 plained of was made, as provided in section 2112 of title 28,  
3 United States Code. The costs of certifying and filing such  
4 record shall be paid by the party making such appeal.” Sub-  
5 section (b) of section 207 of the Act of September 23, 1950,  
6 as amended (64 Stat. 974), is amended by adding at the end  
7 of that subsection three additional sentences reading as fol-  
8 lows: “The local educational agency affected may file with  
9 the court a petition to review such action. A copy of the  
10 petition shall be forthwith transmitted by the clerk of the court  
11 to the Commissioner, or any officer designated by him for that  
12 purpose. Upon the filing of the petition the court shall have  
13 jurisdiction to affirm or set aside the action of the Commis-  
14 sioner in whole or in part.”

15 SEC. 33. The fifth and sixth sentences of subsection  
16 (b) of section 207 of the International Claims Settlement  
17 Act of 1949, as amended (69 Stat. 564), are amended to  
18 read as follows: “Such petition for review must be filed  
19 within sixty days after the date of mailing of the final order  
20 of denial by said designee and a copy shall forthwith be  
21 transmitted to the said designee by the clerk of the court.  
22 Within forty-five days after receipt of such petition for  
23 review, or within such further time as the court may grant for  
24 good cause shown, said designee shall file an answer thereto,



1 and shall file with the court the record of the proceedings  
 2 with respect to such claim, as provided in section 2112 of  
 3 title 28, United States Code.”

4 SEC. 34. The second and third sentences of section 9  
 5 of the Bank Holding Company Act of 1956 (70 Stat. 138)  
 6 are amended to read as follows: “A copy of such petition  
 7 shall be forthwith transmitted to the Board by the clerk  
 8 of the court, and thereupon the Board shall file in the court  
 9 the record made before the Board, as provided in section  
 10 2112 of title 28, United States Code. Upon the filing of  
 11 such petition the court shall have jurisdiction to affirm, set  
 12 aside, or modify the order of the Board and to require the  
 13 Board to take such action with regard to the matter under  
 14 review as the court deems proper.”

15 SEC. 35. This Act shall not be construed to repeal or  
 16 modify any provision of the Administrative Procedure Act.









85TH CONGRESS  
1ST SESSION

**H. R. 6788**

[Report No. 842]

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## **A BILL**

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To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

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By Mr. Celler

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APRIL 10, 1957

Referred to the Committee on the Judiciary

JULY 23, 1957

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed







House Aug. 5, 1957

The Interior and Insular Affairs Committee reported without amendment H.R. 8646, to clarify the authority of the Secretary of Interior to convey federally owned land utilized in the furnishing of public works (H. Rept. 995). p. 12446

35. ADMINISTRATIVE ORDERS. Passed as reported H.R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating thereto. pp. 12374-79
36. VETERANS' BENEFITS; PERSONNEL. Passed without amendment H.R. 8522, to amend and clarify the reemployment provisions of the Universal Military Training and Service Act. pp. 12379-80
37. TRANSPORTATION. Passed without amendment S. 943, to require carriers by motor vehicle to file with the ICC their actual rates or charges for transportation services. (p. 12382) This bill will now be sent to the President.  
Passed over, at the request of Rep. Byrnes, Wisc., H.R. 5384, to amend the ICC Act so as to provide for the preservation of competitive through routes for rail carriers; and, at the request of Rep. Broyhill, S. 1383, to amend the ICC Act so as to require freight forwarders to obtain certificates of public convenience and necessity. p. 12381
38. WATER UTILIZATION. Passed as reported S. 1556, to grant the consent of Congress to Mont., S. Dak., N. Dak., and Wyo. to negotiate and enter into a compact relating to apportionment of the waters of the Little Mo. River and its tributaries. pp. 12384-85
39. RECLAMATION. Passed as reported H.R. 5679, to authorize amendment of the irrigation repayment contract between the U.S. and the Mirage Flats Irrigation District, Nebr. pp. 12386-87  
Passed without amendment H.R. 5192, to extend the time during which the Secretary of Interior may enter into amendatory repayment contracts under the Federal reclamation laws. p. 12387  
Passed with amendment, under suspension of the rules, S. 1482, to amend the Columbia Basin Project Act so as to increase the limitation on the acreage one family might have of irrigated land. pp. 12408-11  
The Interior and Insular Affairs Committee reported with amendment H.R. 5309, to authorize the Secretary of the Interior to construct and maintain the lower Rio Grande rehabilitation project, Tex., Mercedes division (H. Rept. 1002). pp. 12446-47
40. BUDGETING. Rep. Morano spoke in faovr of the enactment of H.R. 8002, to provide for the stating of appropriation estimates on an accrued expenditure basis. p. 12400
41. CASEIN. Passed without amendment H.R. 38, to amend the Tariff Act of 1930 so as to provide for the temporary free importation of casein. p. 12432
42. ATOMIC ENERGY. Reps. Holifield and Price reviewed recent developments in the field of atomic energy, including the AEC program of assistance to cooperatives and publicly owned electric power groups. pp. 12442-44, 12444-45
43. PRINTING. Received from GAO a report on the audit of GPO for the 1956 fiscal year. p. 12446

ITEMS IN APPENDIX

44. FARM PRICES. Sen. Langer inserted two Farmer's Union Grain Terminal Ass'n radio roundups on the economic situation in the Dakotas and the problem of adjusting farm production, increasing with research, to relatively stable food and fiber consumption, without cutting farm income. pp. A6304-5
45. TOBACCO. Rep. Bass inserted an article on the Government's income from the tobacco price support program. p. A6309  
Rep. Scott, N.C., inserted an article, "Smoking and Cancer--What is Known and Unknown--Here's Another View: Tobacco May Be Harmless." pp. A6341-3
46. WHEAT. Speech of Rep. Hill supporting H.R. 8456, to exempt from liability wheat producers who use their entire crop for feed or seed on the farm, and inserting statements by CSS Administrator Berger and Farmer's Union President Baker on the bill, and discussing provisions of the bill with Reps. Hill, Harrison, Neb., Cederberg, Gavin, Fulton, McCulloch, and Dixon. pp. A6313-16  
Speech of Rep. Rhodes, Pa., supporting H.R. 8456, wheat for on-farm consumption, and reading constituent's letters supporting the bill. p. A6338
47. FOREIGN AID. Rep. Smith inserted a Wall Street Journal editorial criticizing the administration for requesting funds for Saudi Arabia which had not been accepted in fiscal year 1957. p. A6322
48. LIVESTOCK. Extension of remarks of Rep. Metcalf supporting H.R. 7244, to establish a voluntary program for research and promotion of the sale of meat and meat products, and inserting letters from Mont. cattlemen supporting the bill. pp. A6325-6
49. BUDGETING. Reps. MacDonald, Rogers, Fla., and Nimitz inserted material favoring the passage of H.R. 8002, to provide for the stating of appropriation estimates on an accrued expenditure basis. pp. A6337-38, A6343, A6348  
Rep. Rogers, Fla., inserted a Chamber of Commerce report favoring reductions in taxes, Federal spending, and the Federal budget. pp. A6326-27
50. ELECTRIFICATION. Extension of remarks of Rep. Gwinn opposing legislation for the development of the Niagara River for power, and inserting a letter he had received on the matter. pp. A6348-49

BILLS INTRODUCED

51. IMPORTS. S. 2692, by Sen. Malone, to impose a tax on the importation of tungsten; to Finance Committee. Remarks of author. p. 12302
52. LIVESTOCK PRICES. S. Con. Res. 43, by Sen. Malone, to establish a Joint congressional committee for investigation of cattle and lamb prices; to Agriculture and Forestry Committee.
53. INFLATION. H. Con. Res. 222, by Rep. Vursell, calling on all labor officials, the National Association of Manufacturers, the National Chamber of Commerce, the State chambers of commerce, and all businessmen of the Nation to cooperate in efforts to stop inflation and the constant rise in the cost of living; to Banking and Currency Committee.



and a motion to reconsider was laid on the table.

A similar House bill (H. R. 5806) was laid on the table.

#### DEVELOPMENT OF PHOSPHATE ON THE PUBLIC DOMAIN

The Clerk called the bill (S. 334) to amend section 27 of the Mineral Leasing Act of February 25, 1920, as amended (30 U. S. C. 184), in order to promote the development of phosphate on the public domain.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That the second sentence of section 27 of the act of February 25, 1920, as amended (30 U. S. C. 184), is amended by the deletion of the words "or permits exceeding in the aggregate 5,120 acres in any one State, and."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### RETIREMENT OF FORMER MEMBERS OF COAST GUARD RESERVE

The Clerk called the bill (S. 1446) to amend title 14, United States Code, so as to provide for retirement of certain former members of the Coast Guard Reserve.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 755 of title 14, United States Code, is amended by adding thereto a new subsection (f) to read as follows:

"(f) Any former member of the Coast Guard Reserve, other than a temporary member, honorably discharged or discharged under honorable conditions from the Coast Guard Reserve after February 18, 1941, and before January 1, 1949, who at the time of his discharge had completed at least 30 years of active service in the Armed Forces other than active duty for training, or who had completed at least 20 years of active service other than active duty for training the last 10 of which he served in the 11-year period immediately preceding his discharge, shall upon his request be placed on the retired list of the Coast Guard Reserve and shall be entitled to pay, only after being placed on the retired list, at the rate of 50 percent of his active-duty rate of pay at the time of discharge.

With the following committee amendment:

On page 2, strike out lines 6, 7, and 8, and add the following: "shall be entitled to receive the same retired pay, only after being placed on the retired list, that he would be entitled to receive had he been retired as a member of the Naval Reserve under the Naval Reserve Act of 1938 instead of being discharged."

The committee amendment was agreed to.

The bill was ordered to be read a third time was read the third time, and passed, and a motion to reconsider was laid on the table.

#### DISPOSAL OF CERTAIN FEDERAL PROPERTY

The Clerk called the bill (S. 1574) to provide for the disposal of certain Fed-

eral property in the Coulee Dam and Grand Coulee areas, to provide assistance in the establishment of a municipality incorporated under the laws of Washington, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. CUNNINGHAM of Iowa. Mr. Speaker, at the request of my colleague, the gentleman from Iowa [Mr. JENSEN], I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Iowa? There was no objection.

#### INTERSTATE COMPACTS DEALING WITH JUVENILES AND DELINQUENT JUVENILES

The Clerk called the joint resolution (H. J. Res. 10) to give the consent of the Congress to interstate compacts or agreements dealing with juveniles and delinquent juveniles, and for other purposes.

There being no objection, the Clerk read the joint resolution, as follows:

*Resolved, etc.,* That title 4 of the United States Code is amended by adding after section 111, the following section:

"§ 112. Compacts between States for cooperation in dealing with juveniles and delinquent juveniles; consent of Congress

"The consent of Congress is hereby given to any two or more States, including the Territories or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, to enter into agreements or compacts dealing with—

"(a) the supervision by the authorities of one State of juveniles who have been placed on probation or parole by the authorities of another State, and for the detention and return of such juveniles;

"(b) the detention and return of juveniles who have run away from one State into another without the consent of their parents or guardian, or who have run away from one State into another and are charged with being delinquent by reason of a violation of any criminal law;

"(c) the detention and return of juveniles who have been found to be delinquent by a court in one State, who are placed on probation or parole or whose legal custody is vested in an agency or institution of that State, and who, while still on probation or parole or while their legal custody is still vested in such agency or institution, run away without permission to another State; and

"(d) the joint or cooperative care, treatment, and rehabilitation of juveniles, who have been found to be delinquent by a court in one State, in specialized institutions for juveniles in another State."

Sec. 2. The right to withdraw the consent given herein and the right to alter, amend, or repeal this act, is expressly reserved.

Sec. 3. The analysis of chapter 4 immediately preceding section 101, title 4, of the United States Code, is amended by inserting after item 111 the following new item:

"112. Compacts between States for cooperating in dealing with juveniles and delinquent juveniles; consent of Congress."

With the following committee amendments:

Page 1, lines 8 and 9, strike out "two or more States, including" and insert "combi-

nation or combinations of the following States: Arkansas, California, Colorado, Connecticut, Florida, Indiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, Wisconsin, Wyoming, to."

Page 2, line 2, after "compacts" insert "among themselves."

Page 2, lines 10 to 12 strike out "charged with being delinquent by reason of a violation of any criminal law" and insert "alleged to be delinquent by reason of committing an act which would be a felony if committed by an adult."

Page 2, line 19 strike out "and" and insert "or."

The committee amendments were agreed to.

Mr. KEATING. Mr. Speaker, the purpose of House Joint Resolution 10 is to give the consent of Congress to interstate compacts dealing with juveniles and delinquent juveniles.

This country today is faced with a tremendous problem in the handling of crimes committed by juveniles and in the rehabilitation of children who become involved in such crimes. It is a problem which is common to all of the States and there are many instances in which the States must cooperate in handling the problem of any one juvenile. For that reason a number of our States have entered into compacts with respect to the supervision, by the authorities of one State, over juveniles placed on probation or on parole by the authorities of another. These compacts also govern procedures for the retention and return of juveniles who have crossed State lines and who are alleged to be delinquent because they have committed an act which would have been a felony if committed by an adult. They also represent an effort on the part of the States to cooperate in the care, treatment, and rehabilitation of juveniles, found delinquent in one State, in specialized institutions for juveniles in another State.

Compacts and agreements such as these among the several States certainly constitute a progressive and constructive forward step in the solution of the problem of juvenile delinquency in the country. What House Joint Resolution 10 would do is put the stamp of congressional approval upon this effort on the part of States.

While this legislation limits congressional consent to those States which have already enacted laws adopting interstate compacts, it does not prevent other States from becoming parties to these compacts. It merely requires that other States adopt, in the future, legislation embodying a compact or agreement which would conform generally to this act, in order to gain congressional consent.

I strongly urge the passage of this resolution, and it is my hope that, within the next few years, those States which have not already entered into such a compact will see fit to do so.

The resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.



### PRESERVATION OF UNUSED ACREAGE ALLOTMENTS

The Clerk called the bill (H. R. 8030) to amend the Agricultural Adjustment Act of 1938 with respect to acreage history.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 377 of the Agricultural Adjustment Act of 1938, as amended, is amended to read as follows:

"Sec. 377. In any case in which, during any year within the period 1957 to 1959, inclusive, for which acreage planted to a commodity on any farm (including the acreage regarded as planted to the commodity under the provisions of this title for releasing unused farm allotments and by reason of participation in the soil bank programs) is less than the acreage allotment for such farm, the entire acreage allotment for such farm (excluding any allotment released from the farm or reapportioned to the farm) shall be considered for purposes of future State, county, and farm acreage allotments to have been planted to such commodity in such year on such farm. Acreage history credits for released or reapportioned acreage shall be governed by the applicable provisions of this title pertaining to the release and reapportionment of acreage allotments. This section shall not be applicable in any case in which the amount of wheat or rice required to be stored to postpone or avoid payment of penalty has been reduced because the allotment was not fully planted."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

### SUPERGRADE POSITIONS IN NA- TIONAL SECURITY COUNCIL

The Clerk called the bill (S. 1884) to amend section 505 of the Classification Act of 1949, as amended.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 505 of the Classification Act of 1949, as amended, is amended by adding at the end thereof a new subsection as follows:

"(f) The National Security Council is authorized, subject to the procedures prescribed by this section, to place two additional positions in grade 18, one additional position in grade 17, and two additional positions in grade 16 of the general schedule. Such positions shall be in addition to the number of positions authorized to be placed in such grades by subsection (b)."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

### REMOVAL OF EMPLOYMENT IN- EQUITIES FOR POSTAL FIELD SERVICE EMPLOYEES

The Clerk called the bill (H. R. 7930) to correct certain inequities resulting from the involuntary conversion of salaries of certain employees to the postal field service schedule under the Postal Field Service Compensation Act of 1955.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That each employee—  
(1) who is in the postal field service on the date of enactment of this section,

(2) whose basic salary was adjusted under section 304 of the Postal Field Service Compensation Act of 1955 (Public Law 68, 84th Cong.) and, immediately prior to such adjustment, was paid under the Classification Act of 1949, as amended, or under a prevailing wage schedule,

(3) who, prior to such adjustment of salary, had performed service which was creditable toward his next within-grade step-increase under section 701 (a) of the Classification Act of 1949, as amended, or under such prevailing wage schedule, and

(4) whose amount of increase in basic salary received upon adjustment of his basic salary under section 304 of the Postal Field Service Compensation Act of 1955 was less than the difference between the salary for that step of the grade of his position under the Classification Act of 1949, as amended, or of his position under such prevailing wage schedule, which he occupied immediately prior to such adjustment of salary and the salary at such time for the next higher step of such grade,

shall, for purposes of the first advancement by step-increase under and in accordance with section 401 of the Postal Field Service Compensation Act of 1955.

(A) have his anniversary date adjusted to the first day of his first pay period under such act, which begins on or after the date on which he would have earned a within-grade step-increase under the Classification Act of 1949, as amended, or a within-grade step-increase under such prevailing wage schedule, if his position had remained subject to the Classification Act of 1949, as amended, or subject to such schedule, as the case may be, unless his anniversary date under the Postal Field Service Compensation Act of 1955 which is in effect on the date of enactment of this section occurs earlier than such adjusted anniversary date, and

(B) be paid, for all periods of service performed by him under the Postal Field Service Compensation Act of 1955 beginning on or after such adjusted anniversary date, the additional basic salary to which he becomes entitled under such act by reason of this section,

subject to and in accordance with the following requirements:

(i) that any advancement of such employee by step-increase under section 401 of such act which such employee may have received prior to the date of enactment of this section shall not be regarded as an equivalent increase in basic salary for purposes of such act, and

(ii) that the amount of additional basic salary to which such employee is entitled under clause (B) of this section is appropriately reduced by the amount of additional basic salary attributable to any advancement of such employee by step-increase under section 401 of such act prior to the date of enactment of this section.

With the following committee amendment:

Page 4, after line 2, add the following sections:

"SEC. 2. Section 404 (c) (1) of the Postal Field Service Compensation Act of 1955 (69 Stat. 123; Public Law 68, 84th Congress; 39 U. S. C. 984 (c) (1)) is amended—

"(1) by striking out the word 'and' immediately following the semicolon at the end of subparagraph (C) thereof;

"(2) by striking out the period at the end of subparagraph (D) thereof and inserting in lieu of such period a semicolon and the word 'and'; and

"(3) by adding at the end of such section 404 (c) (1) the following new subparagraph:

"(E) all time on the rolls under the Postal Accounts Division (including time on the rolls under the former Post Office Department Division) in the General Accounting Office continuous to the date of the

transfer of the employee to the Post Office Department in accordance with section 7 (a) of the Post Office Department Financial Control Act of 1950 (39 U. S. C. 794e (a)).

"Sec. 3. (a) The amendment made by section 2 of this act shall take effect as of December 3, 1955.

"(b) No payment of longevity compensation shall be made, by reason of the amendment made by section 2 of this act and the provisions of subsection (a) of this section, for any period prior to the date of enactment of this section, to any person who is not an employee in the post field service on such date of enactment."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to correct certain inequities with respect to automatic step-increase anniversary dates and longevity step increases of postal field service employees."

A motion to reconsider was laid on the table.

### RATES OF TOLL ON BRIDGE ACROSS MISSOURI RIVER NEAR RULO, NEBR.

The Clerk called the bill (H. R. 988) to amend the act of March 4, 1933, to extend by 10 years the period prescribed for determining the rates of toll to be charged for use of the bridge across the Missouri River near Rulo, Nebr.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That subsection (e) of section 5 of the act entitled "An act to authorize the construction of certain bridges and to extend the times for commencing and/or completing the construction of other bridges over the navigable waters of the United States," approved March 4, 1933 (47 Stat. 1556), as amended by the act of June 19, 1948 (62 Stat. 497), is further amended (1) by striking out "and financing" and inserting ", financing, and refinancing," and (2) by striking out "30 years" and inserting "40 years."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

### ABBREVIATED RECORDS IN REVIEW- ING ADMINISTRATIVE AGENCY PROCEEDINGS

The Clerk called the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders

"SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting



at the end of such chapter immediately following section 2111 an additional section, as follows:

**"§ 2112. Record on review and enforcement of agency orders**

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding. The record in such proceedings shall be certified and filed in or held for the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which its judgment the proceedings may be carried on with the greatest convenience to all the parties involved. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a pre-hearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be necessary for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court

the agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review proceedings."

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify, or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

"(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: "Until the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the act of October 15, 1914, as amended (64 Stat. 1127),

are amended to read as follows: "If such person fails or neglects to obey such order of the Commission or Board while the same is in effect, the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall file the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows: "Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive."

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Post Office Department and thereupon the said Department shall file in the court the record, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside or modify the order of the Department."

SEC. 6. (a) Subsection (c) of section 203 of the Packers and Stockyards Act 1921 (42 Stat. 162) is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals of the United States as provided in section 204 the Secretary at any time upon such notice and in such manner as he deems proper but only after reasonable opportunity to the packer to be heard may amend or set aside the report or order in whole or in part."

(b) Subsections (b) and (c) of section 204 of the Packers and Stockyards Acts, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, re-



straining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within 60 days after entry of the decree."

SEC. 7. (a) The third sentence of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code."

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended, are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive."

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80) is amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901) are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction, to affirm, modify, and enforce or set aside such order, in whole or in part."

SEC. 11. The third sentence of subsection (c) of section 18 of the act of June 18, 1934 (48 Stat. 1002), is amended to read as fol-

lows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28, United States Code."

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719), is amended to read as follows: "Within 30 days after the filing of an appeal, the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 13. (a) Subsection (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), is amended to read as follows:

"(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), are amended to read as follows:

"(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its members, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the record. \* \* \* Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinafter provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28."

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and

shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended, are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended (49 Stat. 860), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify, or set aside, in whole or in part, any find or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Board, or any officer thereof designated by the Board for that purpose, and thereupon the Board shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order."

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024), is amended to read as follows:

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board



by the clerk of the court; and the Board shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (1) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

(b) The first and second sentences of paragraph (3) of subsection (1) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

SEC. 21. The third sentence of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code."

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set

aside such order in whole or in part, so far as as it is applicable to the petitioner."

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within 15 days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record."

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287), is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part."

(b) The second and third paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary."

"At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal."

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows:

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued."

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Com-

mission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction, to affirm, modify, or set aside such order, in whole or in part."

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 27. (a) The third sentence of paragraph (1) of subsection (b) of section 632 of the act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code."

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings."

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927), is amended to read as follows: "Within 30 days after the filing of said appeal the Secretary shall file with the court the record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal."

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides."

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court the record



of the proceedings before the Board with respect to the matter concerning which judicial review is sought, as provided in section 2112 of title 28, United States Code. \* \* \* Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board."

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner, the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the record."

Sec. 31. (a) Section 6 of the act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

"Sec. 6. Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code."

(b) The second sentence of subsection (c) of section 7 of the act of December 29, 1950 (64 Stat. 1131), is amended to read as follows: "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order."

Sec. 32. The second and third sentences of subsection (b) of section 208 of the Federal Coal Mine Safety Act, as amended (66 Stat. 702), are amended to read as follows: "Upon receipt of such copy of a notice of appeal the Board shall file in such court the record upon which the order complained of was made, as provided in section 2112 of title 28, United States Code. The costs of certifying and filing such record shall be paid by the party making such appeal."

Sec. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564), are amended to read as follows: "Such petition for review must be filed within 60 days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within 45 days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of title 28, United States Code."

Sec. 34. The second and third sentences of section 9 of the Bank Holding Company Act of 1956 (70 Stat. 138) are amended to read as follows: "A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper."

SEC. 35. This act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

With the following committee amendments:

Page 2, line 8, strike out "rules" and insert "rules, which so far as practicable shall be uniform in all such courts."

Page 2, line 12, strike out "in which" and insert "to the extent that."

Page 2, line 20, after "proceeding," change the period to a comma and add "and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court."

Page 2, line 21, after "for," add "and transmitted to."

Page 3, line 2, after "which," strike out "in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved" and insert "a proceeding with respect to such order was first instituted."

Page 3, line 6, after "filed," add "For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals."

Page 4, line 11, strike "necessary" and insert "proper."

Page 4, line 15, strike "If the rules of the court of appeals in which a proceeding is pending do not require the printing of the entire record in that court the" and insert "The."

Page 4, line 19, after "subsection" insert "and if so requested by the petitioner for review or respondent in enforcement shall,".

Page 5, line 13, at the end of the line strike "proceedings" and insert "or enforcement proceedings."

Page 5, between lines 13 and 14, insert a new subsection:

"(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce these orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts."

Page 6, line 10, after "therein," insert "concurrently with the Commission until the filing of the record,".

Page 7, line 21, after "therein," strike the comma and insert "concurrently with the Commission or Board until the filing of the record,".

Page 9, line 16, after "Subsections," strike "(b) and (c)" and insert "(b), (c), and (d)".

Page 10, between lines 8 and 9, insert a new subsection:

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

Page 10, line 20, strike "third sentence" and insert "third and fourth sentences."

Page 10, line 21, strike out "is" and insert "are".

Page 11, line 3, after "Code," add "The testimony and evidence taken or submitted before the said Commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case."

Page 12, lines 18 and 19, strike "exclusive jurisdiction," and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

Page 14, line 21, strike "members" and insert "member".

Page 14, line 23, strike "members" and insert "member".

Page 16, line 21, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

Page 17, line 5, strike "find" and insert "finding".

Page 17, line 6, after "it," strike the period and insert "under the provisions of this act."

Page 17, line 22, strike "Board" and insert "Commission."

Page 17, line 23, strike "Board" and insert "Commission."

Page 17, line 24, strike "Board" and insert "Commission."

Page 18, line 22, after "it," strike the period and insert "under the provisions of this act."

Page 19, line 18, after "in," insert "the court."

Page 20, line 13, strike "The third sentence" and insert "(a) The second and third sentences."

Page 20, line 15, strike "is" and insert "are."

Page 20, line 16, after "follows," insert "A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose."

Page 20, between lines 19 and 20 insert the following paragraph:

"(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: 'Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.'"

Page 22, line 13, after "The" strike "second and third" and insert "second, third, and fourth."

Page 23, between lines 4 and 5, insert a new paragraph as follows:

"The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

Page 24, line 4, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

Page 24, lines 15 and 16, strike "exclusive jurisdiction" and insert "jurisdiction, which upon the filing of the record shall be exclusive,".

Page 24, line 18, after "(a)" strike "The third sentence of paragraph" and insert "Paragraph."

Page 24, line 21, after the colon insert the following subsection:

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose."

Page 28, line 4, strike out all of section 32 and insert in lieu thereof:

"Subsection (b) of section 207 of the act of September 23, 1950, as amended (64 Stat. 974), is amended by adding at the end of that subsection three additional sentences reading as follows: 'The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for



that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part."

Page 20, line 4, strike the figure "(1)" and insert the letter "(1)."

Page 22, line 12, strike "a" immediately before "part."

Page 26, line 23, insert a period immediately after "Code."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### CONVEYANCE OF ESLER FIELD TO RAPIDES, LA.

The Clerk called the bill (H. R. 2816) to provide for the conveyance of Esler Field, La., to the parish of Rapides in the State of Louisiana, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That, subject to sections 2 and 3, the Secretary of the Army shall convey, without monetary consideration, to the parish of Rapides in the State of Louisiana, all the right, title, and interest of the United States in and to the real property comprising Esler Field, La., described as a tract of land situated in the parish of Rapides, State of Louisiana, and being part of sections 21, 22, and 24 and part of fractional sections 23 and 38, township 5 north, range 2 east of the Louisiana meridian, and being more particularly described as follows:

Beginning at the southwest corner of said fractional section 23; thence north along the west line of said fractional section 23 and the west line of said section 22 to the west quarter corner thereof; thence east along the east and west quarter line of said section 22 and the east and west quarter line of said section 21 to the east quarter corner of said section 21; thence south along the east line of said section 21 and the east line of said section 24 to the southeast corner thereof; thence west along the south line of said section 24 and the south line of said fractional section 23 to its intersection with the east line of said fractional section 38; thence in the southeasterly direction along the east line of said fractional section 38 to a point on the north bank of the Bayou Flagon; thence in a general westerly direction along the said north bank of Bayou Flagon to its intersection with the west line of said fractional section 38; thence in a northwesterly direction along said west line of fractional section 38 to a point on the aforesaid south line of fractional section 23; thence west along the south line of said fractional section 23 to the point of beginning, containing 1,991.43 acres, more or less, together with all improvements thereon and appurtenances thereunto belonging.

SEC. 2. The conveyance authorized by this act shall—

(1) reserve to the United States all mineral rights, including gas and oil, in the property authorized to be conveyed by this act; and

(2) contain such other reservations, restrictions, terms, and conditions as the Secretary of the Army determines to be necessary to properly protect the interests of the United States.

SEC. 3. The conveyance authorized by this act shall be upon conditions that—

(1) such property shall be used as a public civil airport, and, if the parish of Rapides in the State of Louisiana, shall cease to use such property as a public airport for a period of

2 successive years, or more, then all the right, title, and interest in and to such real property shall revert to and become the property of the United States which shall have the immediate right of reentry thereon; and

(2) whenever the Congress of the United States declares a state of war or other national emergency, or the President declares a state of emergency, and upon the determination by the Secretary of Defense that the property conveyed under this act is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States shall have the right, without obligation to make payment of any kind, to reenter upon the property and use the same or any part thereof, including any and all improvements made thereon by the parish of Rapides, for the duration of such state of war or of such emergency. Upon the termination of such state of war or of such emergency, plus 6 months, such property shall revert to the parish of Rapides.

SEC. 4. The first action of the act entitled "An act to provide for the conveyance of Camp Livingston, Camp Beauregard, and Esler Field, La., to the State of Louisiana, and for other purposes," approved May 14, 1956 (70 Stat. 156; Public Law No. 521, 84th Cong.) is amended by striking out "Camp Livingston, Camp Beauregard, and Esler Field, La." and inserting in lieu thereof "Camp Livingston and Camp Beauregard, La."

With the following committee amendments.

Delete the period at the end of line 7, page 3, insert a comma and delete lines 11 through 16, and at the end of line 7 insert the following language: "including (a) the nonexclusive use of the airport by transient military aircraft without charge; (b) the nonexclusive use of the airport by military aircraft without charge during periods of maneuvers in Louisiana; (c) the continued nonexclusive use of the airport, without charge, by the Louisiana National Guard; and (d) the continued use of space at the airport, without charge, by the Louisiana National Guard."

"(3) provide for a reverter to the United States at the election of the Secretary of the Army, for the breach of any of the terms and conditions by the parish of Rapides, its successors and assigns."

On page 3, line 10, delete the word "public" and insert in lieu thereof the word "civil."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### AMENDING SECTION 1552, TITLE 10, UNITED STATES CODE, AND SECTION 301 OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944

The Clerk called the bill (H. R. 8772) to amend section 1552, title 10, United States Code and section 301 of the Servicemen's Readjustment Act of 1944 to provide that the Board for the Correction of Military or Naval Records and the Boards of Review, Discharges, and Dismissals shall give consideration to satisfactory evidence relating to good character and exemplary conduct in civilian life after discharge or dismissal in determining whether or not to correct certain discharges and dismissals, and for other purposes.

Mr. CUNNINGHAM of Iowa. Mr. Speaker, I am advised by the leadership

that this bill is scheduled for consideration under suspension. Therefore, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Iowa? There was no objection.

#### DISPOSAL OF CERTAIN UNCOMPLETED NAVAL VESSELS

The Clerk called the bill (H. R. 8547) to authorize the disposal of certain uncompleted vessels.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

#### CLARIFYING REEMPLOYMENT PROVISIONS OF UNIVERSAL MILITARY TRAINING AND SERVICE ACT

The Clerk called the bill (H. R. 8522) to amend and clarify the reemployment provisions of the Universal Military Training and Service Act, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

*Be it enacted, etc.,* That section 9 of the Universal Military Training and Service Act, as amended (50 U. S. C. App. 459), is amended as follows:

(1) By adding the following words at the end of paragraph (A) of subsection (b): "unless his restoration under subparagraph (i) or (ii) of this paragraph would require the separation of an employee with a higher standing for reduction in force purposes."

(2) By adding the following new paragraph at the end of subsection (e):

"(4) Any person who is restored to a position in accordance with the provisions of paragraph (A) of subsection (b) may be included in a reduction in force at any time in accordance with rules applicable to all other employees."

(3) By inserting in paragraph (2) of subsection (g) the words "and other than for training" after the words "physical fitness" in the parenthetical phrase thereof.

(4) By amending paragraph (3) of subsection (g) to read as follows:

"(3) Any member of a reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than 3 consecutive months shall, upon application for reemployment within 60 days after (A) his release from that active duty for training after satisfactory service, or (B) his discharge from hospitalization incident to that active duty for training, or 1 year after his scheduled release from that training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this section for persons inducted under the provisions of this title, except that (A) any person restored to a position in accordance with the provisions of this paragraph shall not be discharged from such position without cause within 6 months after that restoration, and (B) no reemployment rights granted by this paragraph shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under the Veterans' Preference Act of 1944, as amended (5 U. S. C. 851 and the following)."

(5) By adding the following new paragraphs at the end of subsection (g):



"(4) Any employee not covered by paragraph (3) of this subsection who holds a position described in paragraph (A) or (B) of subsection (b) of this section shall be permitted by his employer to report for the purpose of being inducted into, entering, determining his physical fitness to enter, or performing active duty for training or inactive-duty training in the Armed Forces of the United States. Upon his release from a period of such active duty for training or inactive-duty training, or upon his rejection, or upon his discharge from hospitalization incident to that training or rejection, such employee shall be reinstated in his position with such seniority, status, pay, and vacation as he would have had if he had not been absent for such purposes, if he applies for reinstatement at the beginning of his next regularly scheduled working period after expiration of the time necessary to travel from the place of rejection or training to the place of employment following his rejection or release, or within a reasonable time thereafter. If that employee is hospitalized incident to active duty for training, inactive-duty training, or rejection, he shall be required to apply for reinstatement within a reasonable time after the expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within 1 year after his rejection or release from active duty for training or inactive-duty training, whichever is earlier. If an employee covered by this paragraph is not qualified to perform the duties of his position by reason of disability sustained during active duty for training or inactive-duty training, but is qualified to perform the duties of any other position in the employ of the employer or his successor in interest, he shall be restored by that employer or his successor in interest to such other position the duties of which he is qualified to perform as will provide him like seniority, status, and pay or the nearest approximation thereof consistent with the circumstances in his case.

"(5) For the purposes of paragraphs (3) and (4), full-time training or other full-timed duty performed by a member of the National Guard under sections 316, 503, 504, or 505 of title 32, United States Code, is considered active duty for training; and for the purpose of paragraph (4), inactive-duty training performed by that member under section 502 of title 32, or section 301 of title 37, United States Code, is considered inactive-duty training."

(6) By redesignating subsections (i) and (j) as "(j)" "(k)", respectively, and by inserting a new subsection "(i)", as follows:

"(i) No rights or remedies which would otherwise be available under this section shall be denied solely because a person has left or leaves a position in employment on probation."

SEC. 2. Section 262 (f) of the Armed Forces Reserve Act of 1952, as amended (50 U. S. C. 1013 (f)), is repealed.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### SURRENDER TREE SITE, SANTIAGO, CUBA

The Clerk called the bill (S. 1063) vesting in the American Battle Monuments Commission the care and maintenance of the Surrender Tree site in Santiago, Cuba.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the American Battle Monuments Commission is responsible for the care and maintenance of the Surrender Tree site in Santiago, Cuba. This

act takes effect on the next July 1 after the date of its enactment.

Mr. O'HARA of Illinois. Mr. Speaker, all this bill does is to transfer responsibility for the care and maintenance of the Surrender Tree site near Santiago, Cuba, from the Department of the Army to the American Battle Monuments Commission. The American Battle Monuments Commission is willing to accept responsibility for the maintenance of this memorial provided specific legislative authority be given. It is estimated that the enactment of this bill would result in an annual reduction of \$1,000 of the Department of the Army's civil functions appropriation.

In 1905 and in 1907 Congress appropriated funds to erect memorials marking the places where American soldiers fell and were temporarily interred in Cuba and in China. One of the memorials stands near Santiago, Cuba, at a place known as the Surrender Tree site, and this memorial marks the spot where the preliminary surrender of the Spanish Army occurred on July 17, 1898. The 33d Michigan Volunteer Infantry was the second volunteer outfit to land in Cuba, following Roosevelt's Rough Riders by a matter of 2 or 3 days. It landed from small boats on the beach at Siboney, was engaged in scrimmaging during the last days of June 1898 and on July 1 and July 2 was heavily engaged at Aguadadoras, on Shafter's extreme left, in the major frontal attack upon Santiago, which resulted in the city's surrender.

Yet when I returned in December of 1955 to the site of the fighting in which I as a boy of 16 had participated I found little record of the 33d Michigan Volunteer Infantry, and was shocked to find inscribed on a memorial tablet at Siboney a minor mention of the 33d Michigan Volunteers as having landed in Cuba on July 1, 1898. I was told that that memorial tablet had been standing at Siboney for many years. No one responsible for it had apparently taken the time and trouble to get the real facts and the real landing date of the first volunteer regiment next to the Rough Riders that landed in Cuba and was actively engaged during the entire period of combat.

Early in the morning of July 1, 1898, some of my buddies in the 33d Michigan, and they like myself were just boys from high school, were killed in action at the siege of Santiago, and I do not like a little bit the inscription on this memorial tablet at Siboney that they with others of the regiment at the time they were dying were just landing on Cuban soil.

Nor do I think it is a proper recognition of the 33d Michigan that among all of the monuments and memorials on San Juan Hill is none erected in memory of the first volunteer regiment next to the Rough Riders to land in Cuba. There are monuments there to other fine regiments, regiments that suffered heavy casualties because of disease, but which did not land in Cuba until after the hardest fighting was over and Santiago was about ready to surrender. But there is no monument for the 33d Michigan, and to me that is not just fair to the members of that regiment, most of

whom now have passed on. The record of history at least should be accurate, and war memorials should be authentic.

The American Battle Monuments Commission has the statutory duty of erecting and maintaining memorials where the American Armed Forces have served, and it is the hope of this surviving veteran of the 33d Michigan that when the Commission takes over the care of the Surrender Tree site it will undertake a survey of the entire memorial situation in the Santiago area.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### INCREASING PENALTIES FOR VIOLATION OF CERTAIN STATUTES ADMINISTERED BY THE ICC

The Clerk called the bill (S. 1492) increasing penalties for violation of certain safety and other statutes administered by the Interstate Commerce Commission.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. BYRNES of Wisconsin. Mr. Speaker, reserving the right to object, I wonder if I may have the attention of the chairman of the Committee on Interstate and Foreign Commerce. This bill and the bills on Calendar No. 173 and Calendar No. 174 all deal with subjects that relate to the Interstate Commerce Commission Act. I notice also in the report that there was registered before the committee some opposition to the bills by different interests that come under the control of the Interstate Commerce Commission. I am wondering whether the chairman of the committee feels that these bills should be considered on the Consent Calendar.

Mr. HARRIS. I fully realize the questions that will arise in the minds of Members when any amendment to the Interstate Commerce Act is considered. However, as to the bill now under consideration, after hearings and consideration we found that there was no opposition to it. It merely refers to a matter of increasing penalties with reference to safety compliance in the operation of common-carrier transportation.

Mr. BYRNES of Wisconsin. In the report there is a statement that the Association of American Railroads, the American Short Line Railroad Association, and the American Trucking Association, are opposed to the bill. That is the information I have.

Mr. HARRIS. The bill as introduced would have increased the penalty from the present \$100 provision to a maximum of \$500. During the course of the consideration of the bill that was compromised to \$250, which I understood eliminated much of the objections to it.

Mr. BYRNES of Wisconsin. It was unanimously reported by the committee?

Mr. HARRIS. It was unanimously reported by the committee on that basis.

Mr. BYRNES of Wisconsin. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the present consideration of the bill?







85TH CONGRESS  
1ST SESSION

# H. R. 6788

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IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JULY 8), 1957

Read twice and referred to the Committee on the Judiciary

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## AN ACT

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That the analysis of chapter 133 of title 28 of the United  
4        States Code, immediately preceding section 2101 of such  
5        title, is amended by inserting at the end thereof the following  
6        additional item:

“2112. Record on review and enforcement of agency orders.”

1       “SEC. 2. Chapter 133 of title 28 of the United States  
2 Code is amended by inserting at the end of such chapter im-  
3 mediately following section 2111 an additional section, as  
4 follows:

5       “§ 2112. Record on review and enforcement of agency orders

6       “(a) The several courts of appeals shall have power  
7 to adopt, with the approval of the Judicial Conference of the  
8 United States, rules, which so far as practicable shall be  
9 uniform in all such courts prescribing the time and manner of  
10 filing and the contents of the record in all proceedings insti-  
11 tuted in the courts of appeals to enjoin, set aside, suspend,  
12 modify, or otherwise review or enforce orders of administrative  
13 agencies, boards, commissions, and officers, to the extent  
14 that the applicable statute does not specifically prescribe  
15 such time or manner of filing or contents of the record. Such  
16 rules may authorize the agency, board, commission, or officer  
17 to file in the court a certified list of the materials comprising  
18 the record and retain and hold for the court all such materials  
19 and transmit the same or any part thereof to the court, when  
20 and as required by it, at any time prior to the final determi-  
21 nation of the proceeding, and such filing of such certified list  
22 of the materials comprising the record and such subsequent  
23 transmittal of any such materials when and as required shall  
24 be deemed full compliance with any provision of law requir-



1 ing the filing of the record in the court. The record in such  
2 proceedings shall be certified and filed in or held for and  
3 transmitted to the court of appeals by the agency, board,  
4 commission, or officer concerned within the time and in the  
5 manner prescribed by such rules. If proceedings have been  
6 instituted in two or more courts of appeals with respect to the  
7 same order the agency, board, commission, or officer con-  
8 cerned shall file the record in that one of such courts in which  
9 a proceeding with respect to such order was first instituted.  
10 The other courts in which such proceedings are pending  
11 shall thereupon transfer them to the court of appeals in  
12 which the record has been filed. For the convenience of  
13 the parties in the interest of justice such court may there-  
14 after transfer all the proceedings with respect to such order  
15 to any other court of appeals.

16 “(b) The record to be filed in the court of appeals in  
17 such a proceeding shall consist of the order sought to be re-  
18 viewed or enforced, the findings or report upon which it is  
19 based, and the pleadings, evidence, and proceedings before  
20 the agency, board, commission, or officer concerned, or such  
21 portions thereof (1) as the said rules of the court of appeals  
22 may require to be included therein, or (2) as the agency,  
23 board, commission, or officer concerned, the petitioner for  
24 review or respondent in enforcement, as the case may be,  
25 and any intervenor in the court proceeding by written stip-

1   ulation filed with the agency, board, commission, or officer  
2   concerned or in the court in any such proceeding may con-  
3   sistently with the rules of such court designate to be included  
4   therein, or (3) as the court upon motion of a party or, after  
5   a prehearing conference, upon its own motion may by order  
6   in any such proceeding designate to be included therein.  
7   Such a stipulation or order may provide in an appropriate case  
8   that no record need be filed in the court of appeals. If, how-  
9   ever, the correctness of a finding of fact by the agency, board,  
10   commission, or officer is in question all of the evidence before  
11   the agency, board, commission, or officer shall be included in  
12   the record except such as the agency, board, commission, or  
13   officer concerned, the petitioner for review or respondent in  
14   enforcement, as the case may be, and any intervenor in the  
15   court proceeding by written stipulation filed with the agency,  
16   board, commission, or officer concerned or in the court agree  
17   to omit as wholly immaterial to the questioned finding. If  
18   there is omitted from the record any portion of the proceed-  
19   ings before the agency, board, commission, or officer which  
20   the court subsequently determines to be proper for it  
21   to consider to enable it to review or enforce the order in  
22   question the court may direct that such additional portion  
23   of the proceedings be filed as a supplement to the record.  
24   The agency, board, commission, or officer concerned may,  
25   at its option and without regard to the foregoing provisions

1 of this subsection, and if so requested by the petitioner for  
2 review or respondent in enforcement shall, file in the court  
3 the entire record of the proceedings before it without  
4 abbreviation.

5 “(c) The agency, board, commission, or officer con-  
6 cerned may transmit to the court of appeals the original  
7 papers comprising the whole or any part of the record or  
8 any supplemental record, otherwise true copies of such papers  
9 certified by an authorized officer or deputy of the agency,  
10 board, commission, or officer concerned shall be transmitted.  
11 Any original papers thus transmitted to the court of appeals  
12 shall be returned to the agency, board, commission, or officer  
13 concerned upon the final determination of the review or  
14 enforcement proceeding. Pending such final determination  
15 any such papers may be returned by the court temporarily to  
16 the custody of the agency, board, commission, or officer con-  
17 cerned if needed for the transaction of the public business.  
18 Certified copies of any papers included in the record or any  
19 supplemental record may also be returned to the agency,  
20 board, commission, or officer concerned upon the final deter-  
21 mination of review or enforcement proceedings.

22 “(d) The provisions of this section are not applicable to  
23 proceedings to review decisions of the Tax Court of the  
24 United States or to proceedings to review or enforce those  
25 orders of administrative agencies, boards, commissions, or



1 officers which are by law reviewable or enforceable by the  
2 district courts.”

3       SEC. 3. (a) The sixth sentence of subsection (b) of  
4 section 5 of the Federal Trade Commission Act, as amended  
5 (52 Stat. 112), is amended to read as follows: “Until the  
6 expiration of the time allowed for filing a petition for review,  
7 if no such petition has been duly filed within such time, or, if  
8 a petition for review has been filed within such time then  
9 until the record in the proceeding has been filed in a court  
10 of appeals of the United States, as hereinafter provided, the  
11 Commission may at any time, upon such notice and in such  
12 manner as it shall deem proper, modify or set aside, in whole  
13 or in part, any report or any order made or issued by it  
14 under this section.”

15       (b) The second and third sentences of subsection (c)  
16 of section 5 of the Federal Trade Commission Act, as  
17 amended (52 Stat. 112-113), are amended to read as fol-  
18 lows: “A copy of such petition shall be forthwith trans-  
19 mitted by the clerk of the court to the Commission, and  
20 thereupon the Commission shall file in the court the record  
21 in the proceeding, as provided in section 2112 of title 28,  
22 United States Code. Upon such filing of the petition the  
23 court shall have jurisdiction of the proceeding and of the  
24 question determined therein concurrently with the Commis-  
25 sion until the filing of the record and shall have power to

1 make and enter a decree affirming, modifying, or setting  
2 aside the order of the Commission, and enforcing the same  
3 to the extent that such order is affirmed and to issue such  
4 writs as are ancillary to its jurisdiction or are necessary in  
5 its judgment to prevent injury to the public or to com-  
6 petitors pendente lite.”

7 (c) Subsection (d) of section 5 of the Federal Trade  
8 Commission Act, as amended (52 Stat. 113), is amended  
9 to read as follows:

10 “(d) Upon the filing of the record with it the jurisdic-  
11 tion of the court of appeals of the United States to affirm,  
12 enforce, modify, or set aside orders of the Commission shall  
13 be exclusive.”

14 SEC. 4. (a) The sixth sentence of the second paragraph  
15 of section 11 of the Act of October 15, 1914, as amended  
16 (64 Stat. 1127), is amended to read as follows: “Until the  
17 record in such hearing shall have been filed in a United  
18 States court of appeals, as hereinafter provided, the Commis-  
19 sion or Board may at any time, upon such notice, and in such  
20 manner as it shall deem proper, modify or set aside, in whole  
21 or in part, any report or any order made or issued by it  
22 under this section.”

23 (b) The first and second sentences of the third para-  
24 graph of section 11 of the Act of October 15, 1914, as  
25 amended (64 Stat. 1127), are amended to read as follows:

1 “If such person fails or neglects to obey such order of the  
2 Commission or Board while the same is in effect, the Com-  
3 mission or Board may apply to the United States court of  
4 appeals, within any circuit where the violation complained  
5 of was or is being committed or where such person resides  
6 or carries on business, for the enforcement of its order, and  
7 shall file the record in the proceeding, as provided in section  
8 2112 of title 28, United States Code. Upon such filing of  
9 the application the court shall cause notice thereof to be  
10 served upon such person, and thereupon shall have jurisdic-  
11 tion of the proceeding and of the question determined therein  
12 concurrently with the Commission or Board until the filing  
13 of the record, and shall have power to make and enter a  
14 decree affirming, modifying, or setting aside the order of  
15 the Commission or Board.”

16 (c) The second and third sentences of the fourth para-  
17 graph of section 11 of the Act of October 15, 1914, as  
18 amended (64 Stat. 1128), are amended to read as follows:  
19 “A copy of such petition shall be forthwith transmitted by  
20 the clerk of the court to the Commission or Board and  
21 thereupon the Commission or Board shall file in the court  
22 the record in the proceeding, as provided in section 2112  
23 of title 28, United States Code. Upon the filing of such  
24 petition the court shall have the same jurisdiction to affirm,



1 set aside, or modify the order of the Commission or Board  
2 as in the case of an application by the Commission or Board  
3 for the enforcement of its order, and the findings of the  
4 Commission or Board as to the facts, if supported by sub-  
5 stantial evidence, determined as provided in section 10 (e)  
6 of the Administrative Procedure Act, shall in like manner  
7 be conclusive.”

8 (d) The fifth paragraph of section 11 of the Act of  
9 October 15, 1914, as amended (64 Stat. 1128), is amended  
10 to read as follows:

11 “Upon the filing of the record with it the jurisdiction  
12 of the United States court of appeals to enforce, set aside,  
13 or modify orders of the Commission or Board shall be  
14 exclusive.”

15 SEC. 5. The fourth and fifth sentences of the first para-  
16 graph of section 2 of the Act of July 28, 1916 (39 Stat.  
17 425), are amended to read as follows: “A copy of such  
18 petition shall be forthwith transmitted by the clerk of the  
19 court to the Post Office Department and thereupon the said  
20 Department shall file in the court the record, as provided  
21 in section 2112 of title 28, United States Code. Upon the  
22 filing of such petition the court shall have jurisdiction to  
23 affirm, set aside or modify the order of the Department.”

1        SEC. 6. (a) Subsection (c) of section 203 of the  
2 Packers and Stockyards Act, 1921 (42 Stat. 162), is  
3 amended to read as follows:

4        “(c) Until the record in such hearing has been filed  
5 in a court of appeals of the United States, as provided in  
6 section 204, the Secretary at any time, upon such notice  
7 and in such manner as he deems proper, but only after  
8 reasonable opportunity to the packer to be heard, may  
9 amend or set aside the report or order, in whole or in part.”

10        (b) Subsections (b), (c), and (d) of section 204 of  
11 the Packers and Stockyards Act, 1921 (42 Stat. 162), are  
12 amended to read as follows:

13        “(b) The clerk of the court shall immediately cause  
14 a copy of the petition to be delivered to the Secretary, and  
15 the Secretary shall thereupon file in the court the record  
16 in such proceedings, as provided in section 2112 of title 28,  
17 United States Code. If before such record is filed the  
18 Secretary amends or sets aside his report or order, in whole  
19 or in part, the petitioner may amend the petition within such  
20 time as the court may determine, on notice to the Secretary.

21        “(c) At any time after such petition is filed, the court,  
22 on application of the Secretary, may issue a temporary  
23 injunction, restraining, to the extent it deems proper, the  
24 packer and his officers, directors, agents, and employees,

1 from violating any of the provisions of the order pending  
2 the final determination of the appeal.

3 “(d) The evidence so taken or admitted, and filed as  
4 aforesaid as a part of the record, shall be considered by the  
5 court as the evidence in the case. The proceedings in such  
6 cases in the court of appeals shall be made a preferred cause  
7 and shall be expedited in every way.”

8 (c) The first sentence of subsection (h) of section 204  
9 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is  
10 amended to read as follows:

11 “(h) The court of appeals shall have jurisdiction, which  
12 upon the filing of the record with it shall be exclusive, to re-  
13 view, and to affirm, set aside, or modify, such orders of the  
14 Secretary, and the decree of such court shall be final except  
15 that it shall be subject to review by the Supreme Court of the  
16 United States upon certiorari, as provided in section 1254 of  
17 title 28, if such writ is duly applied for within sixty days  
18 after entry of the decree.”

19 SEC. 7. (a) The third and fourth sentences of para-  
20 graph (a) of section 6 of the Commodity Exchange Act  
21 (42 Stat. 1001), are amended to read as follows: “The  
22 clerk of the court in which such a petition is filed shall  
23 immediately cause a copy thereof to be delivered to the  
24 Secretary of Agriculture, Chairman of said Commission, or



1 any member thereof, and the said Commission shall there-  
2 upon file in the court the record in such proceedings, as  
3 provided in section 2112 of title 28, United States Code.  
4 The testimony and evidence taken or submitted before the  
5 said Commission, duly filed as aforesaid as a part of the  
6 record, shall be considered by the court as the evidence in  
7 the case.”

8 (b) The seventh and eighth sentences of paragraph (b)  
9 of section 6 of the Commodity Exchange Act (42 Stat.  
10 1002), as amended, are amended to read as follows: “A  
11 copy of such petition shall be forthwith transmitted by the  
12 clerk of the court to the Secretary of Agriculture and there-  
13 upon the Secretary of Agriculture shall file in the court the  
14 record theretofore made, as provided in section 2112 of title  
15 28, United States Code. Upon the filing of the petition the  
16 court shall have jurisdiction to affirm, to set aside, or modify  
17 the order of the Secretary of Agriculture, and the findings of  
18 the Secretary of Agriculture as to the facts, if supported by  
19 the weight of evidence, shall in like manner be conclusive.”

20 SEC. 8. The third and fourth sentences of the second  
21 paragraph of subsection (b) of section 641 of the Tariff Act  
22 of 1930, as amended (49 Stat. 865), are amended to read  
23 as follows: “A copy of such petition shall be forthwith  
24 transmitted by the clerk of the court to the Secretary of the  
25 Treasury, or any officer designated by him for that purpose,

1 and thereupon the Secretary of the Treasury shall file in the  
2 court the record upon which the order complained of was  
3 entered, as provided in section 2112 of title 28, United  
4 States Code. Upon the filing of such petition such court  
5 shall have exclusive jurisdiction to affirm, modify, or set  
6 aside such order, in whole or in part.”

7 SEC. 9. The second sentence of subsection (a) of section  
8 9 of the Securities Act of 1933 (48 Stat. 80) is amended  
9 to read as follows: “A copy of such petition shall be forth-  
10 with transmitted by the clerk of the court to the Commission,  
11 and thereupon the Commission shall file in the court the  
12 record upon which the order complained of was entered, as  
13 provided in section 2112 of title 28, United States Code.”

14 SEC. 10. The second and third sentences of subsection  
15 (a) of section 25 of the Securities Exchange Act of 1934  
16 (48 Stat. 901) are amended to read as follows: “A copy  
17 of such petition shall be forthwith transmitted by the clerk  
18 of the court to any member of the Commission, and there-  
19 upon the Commission shall file in the court the record upon  
20 which the order complained of was entered, as provided in  
21 section 2112 of title 28, United States Code. Upon the  
22 filing of such petition such court shall have jurisdiction,  
23 which upon the filing of the record shall be exclusive, to  
24 affirm, modify, and enforce or set aside such order, in whole  
25 or in part.”

1        SEC. 11. The third sentence of subsection (c) of sec-  
2        tion 18 of the Act of June 18, 1934 (48 Stat. 1002), is  
3        amended to read as follows: "The clerk of the court in which  
4        such a petition is filed shall immediately cause a copy thereof  
5        to be delivered to the Board and it shall thereupon file in the  
6        court the record in the proceedings held before it under  
7        this section, as provided in section 2112 of title 28, United  
8        States Code."

9        SEC. 12. The second sentence of subsection (d) of sec-  
10        tion 402 of the Communications Act of 1934, as amended  
11        (66 Stat. 719), is amended to read as follows: "Within  
12        thirty days after the filing of an appeal, the Commission  
13        shall file with the court the record upon which the order  
14        complained of was entered, as provided in section 2112 of  
15        title 28, United States Code."

16        SEC. 13. (a) Subsection (d) of section 10 of the Na-  
17        tional Labor Relations Act, as amended (61 Stat. 147),  
18        is amended to read as follows:

19        "(d) Until the record in a case shall have been filed in  
20        a court, as hereinafter provided, the Board may at any time  
21        upon reasonable notice and in such manner as it shall deem  
22        proper, modify or set aside, in whole or in part, any finding  
23        or order made or issued by it."

24        (b) The first, second, fifth and seventh sentences of  
25        subsection (e) of section 10 of the National Labor Relations



1 Act, as amended (61 Stat. 147), are amended to read as  
2 follows:

3       “(e) The Board shall have power to petition any court  
4 of appeals of the United States, or if all the courts of appeals  
5 to which application may be made are in vacation, any dis-  
6 trict court of the United States, within any circuit or dis-  
7 trict, respectively, wherein the unfair labor practice in ques-  
8 tion occurred or wherein such person resides or transacts  
9 business, for the enforcement of such order and for appro-  
10 priate temporary relief or restraining order, and shall file in  
11 the court the record in the proceedings, as provided in  
12 section 2112 of title 28, United States Code. Upon the  
13 filing of such petition, the court shall cause notice thereof  
14 to be served upon such person, and thereupon shall have  
15 jurisdiction of the proceeding and of the question determined  
16 therein, and shall have power to grant such temporary relief  
17 or restraining order as it deems just and proper, and to make  
18 and enter a decree enforcing, modifying, and enforcing as  
19 so modified, or setting aside in whole or in part the order  
20 of the Board. \* \* \* If either party shall apply to the  
21 court for leave to adduce additional evidence and shall show  
22 to the satisfaction of the court that such additional evidence  
23 is material and that there were reasonable grounds for the  
24 failure to adduce such evidence in the hearing before the  
25 Board, its member, agent, or agency, the court may

1 order such additional evidence to be taken before the Board,  
2 its member, agent, or agency, and to be made a part  
3 of the record. \* \* \* Upon the filing of the record with it the  
4 jurisdiction of the court shall be exclusive and its judgment  
5 and decree shall be final, except that the same shall be  
6 subject to review by the appropriate United States court  
7 of appeals if application was made to the district court as  
8 hereinabove provided, and by the Supreme Court of the  
9 United States upon writ of certiorari or certification as pro-  
10 vided in section 1254 of title 28.”

11 (c) The second and third sentences of subsection (f) of  
12 section 10 of the National Labor Relations Act, as amended  
13 (61 Stat. 148), are amended to read as follows: “A copy of  
14 such petition shall be forthwith transmitted by the clerk of  
15 the court to the Board, and thereupon the aggrieved party  
16 shall file in the court the record in the proceeding, certified  
17 by the Board, as provided in section 2112 of title 28, United  
18 States Code. Upon the filing of such petition, the court shall  
19 proceed in the same manner as in the case of an application  
20 by the Board under subsection (e) of this section, and shall  
21 have the same jurisdiction to grant to the Board such tem-  
22 porary relief or restraining order as it deems just and proper,  
23 and in like manner to make and enter a decree enforcing,  
24 modifying, and enforcing as so modified, or setting aside in  
25 whole or in part the order of the Board; the findings of the

1 Board with respect to questions of fact if supported by sub-  
2 stantial evidence on the record considered as a whole shall in  
3 like manner be conclusive.”

4 SEC. 14. The third and fourth sentences of subsection  
5 (h) of section 4 of the Federal Alcohol Administration Act  
6 (49 Stat. 980), as amended, are amended to read as follows:  
7 “A copy of such petition shall be forthwith transmitted by  
8 the clerk of the court to the Secretary, or any officer desig-  
9 nated by him for that purpose, and thereupon the Secretary  
10 shall file in the court the record upon which the order com-  
11 plained of was entered, as provided in section 2112 of title  
12 28, United States Code. Upon the filing of such petition  
13 such court shall have exclusive jurisdiction to affirm, modify,  
14 or set aside such order, in whole or in part.”

15 SEC. 15. The second and third sentences of subsection  
16 (a) of section 24 of the Public Utility Holding Company  
17 Act of 1935 (49 Stat. 834), are amended to read as follows:  
18 “A copy of such petition shall be forthwith transmitted by  
19 the clerk of the court to any member of the Commission,  
20 or any officer thereof designated by the Commission for that  
21 purpose, and thereupon the Commission shall file in the  
22 court the record upon which the order complained of was  
23 entered, as provided in section 2112 of title 28, United  
24 States Code. Upon the filing of such petition such court



1 shall have jurisdiction, which upon the filing of the record  
2 shall be exclusive, to affirm, modify, or set aside such order,  
3 in whole or in part.”

4 SEC. 16. (a) Subsection (a) of section 313 of the  
5 Federal Power Act, as amended (49 Stat. 860), is amended  
6 by inserting at the end thereof an additional sentence read-  
7 ing as follows: “Until the record in a proceeding shall have  
8 been filed in a court of appeals, as provided in subsection  
9 (b), the Commission may at any time, upon reasonable  
10 notice and in such manner as it shall deem proper, modify  
11 or set aside, in whole or in part, any finding or order made or  
12 issued by it under the provisions of this Act.”

13 (b) The second and third sentences of subsection (b)  
14 of section 313 of the Federal Power Act, as amended (49  
15 Stat. 860), are amended to read as follows: “A copy of such  
16 petition shall forthwith be transmitted by the clerk of the  
17 court to any member of the Commission and thereupon the  
18 Commission shall file with the court the record upon which  
19 the order complained of was entered, as provided in section  
20 2112 of title 28, United States Code. Upon the filing of  
21 such petition such court shall have jurisdiction, which upon  
22 the filing of the record with it shall be exclusive, to affirm,  
23 modify, or set aside such order in whole or in part.”

24 SEC. 17. The second and third sentences of subsection  
25 (b) of section 611 of the Merchant Marine Act, 1936, as

1 amended (52 Stat. 961), are amended to read as follows:  
2 “A copy of such petition shall be forthwith transmitted by  
3 the clerk of the court to any member of the Commission,  
4 or any officer thereof designated by the Commission for that  
5 purpose, and thereupon the Commission shall file in the court  
6 the record upon which the order complained of was entered,  
7 as provided in section 2112 of title 28, United States Code.  
8 Upon the filing of such petition such court shall have exclu-  
9 sive jurisdiction to determine whether such cancellation or  
10 default was without just cause, and to affirm or set aside  
11 such order.”

12 SEC. 18. Subsection (c) of section 1006 of the Civil  
13 Aeronautics Act of 1938 (52 Stat. 1024), is amended  
14 to read as follows:

15 “(c) A copy of the petition shall, upon filing, be forth-  
16 with transmitted to the Board by the clerk of the court;  
17 and the Board shall thereupon file in the court the record,  
18 if any, upon which the order complained of was entered, as  
19 provided in section 2112 of title 28, United States Code.”

20 SEC. 19. (a) Subsection (a) of section 19 of the  
21 Natural Gas Act (52 Stat. 831), is amended by inserting  
22 at the end thereof an additional sentence reading as follows:  
23 “Until the record in a proceeding shall have been filed in  
24 a court of appeals, as provided in subsection (b), the Com-  
25 mission may at any time, upon reasonable notice and in

1 such manner as it shall deem proper, modify or set aside,  
2 in whole or in part, any finding or order made or issued  
3 by it under the provisions of this Act.”

4 (b) The second and third sentences of subsection (b)  
5 of section 19 of the Natural Gas Act (52 Stat. 831), are  
6 amended to read as follows: “A copy of such petition shall  
7 forthwith be transmitted by the clerk of the court to any  
8 member of the Commission and thereupon the Commission  
9 shall file with the court the record upon which the order  
10 complained of was entered, as provided in section 2112 of  
11 title 28, United States Code. Upon the filing of such peti-  
12 tion such court shall have jurisdiction, which upon the filing  
13 of the record with it shall be exclusive, to affirm, modify,  
14 or set aside such order in whole or in part.”

15 SEC. 20. (a) The first and second sentences of para-  
16 graph (2) of subsection (i) of section 408 of the Federal  
17 Food, Drug, and Cosmetic Act, as added by the Act of  
18 July 22, 1954 (ch. 559, 68 Stat. 515), are amended to  
19 read as follows:

20 “(2) In the case of a petition with respect to an  
21 order under subsection (d) (5) or (e), a copy of the  
22 petition shall be forthwith transmitted by the clerk of the  
23 court to the Secretary, or any officer designated by him  
24 for that purpose, and thereupon the Secretary shall file in  
25 the court the record of the proceedings on which he based



1 his order, as provided in section 2112 of title 28, United  
2 States Code. Upon the filing of such petition, the court shall  
3 have exclusive jurisdiction to affirm or set aside the order  
4 complained of in whole or in part.”

5 (b) The first and second sentences of paragraph (3)  
6 of subsection (i) of section 408 of the Federal Food, Drug,  
7 and Cosmetic Act, as added by the Act of July 22, 1954  
8 (ch. 559, 68 Stat. 515), are amended to read as follows:

9 “(3) In the case of a petition with respect to an order  
10 under subsection (1), a copy of the petition shall be forth-  
11 with transmitted by the clerk of the court to the Secretary  
12 of Agriculture, or any officer designated by him for that  
13 purpose, and thereupon the Secretary shall file in the court  
14 the record of the proceedings on which he based his order,  
15 as provided in section 2112 of title 28, United States Code.  
16 Upon the filing of such petition, the court shall have ex-  
17 clusive jurisdiction to affirm or set aside the order com-  
18 plained of in whole or in part.”

19 SEC. 21. (a) The second and third sentences of para-  
20 graph (1) of subsection (f) of section 701 of the Federal  
21 Food, Drug, and Cosmetic Act (52 Stat. 1055), as  
22 amended, are amended to read as follows: “A copy of  
23 the petition shall be forthwith transmitted by the clerk of  
24 the court to the Secretary or other officer designated by him  
25 for that purpose. The Secretary thereupon shall file in the

1 court the record of the proceedings on which the Secretary  
2 based his order, as provided in section 2112 of title 28,  
3 United States Code.”

4 (b) The first sentence of paragraph (3) of subsection  
5 (f) of section 701 of the Federal Food, Drug, and Cosmetic  
6 Act (52 Stat. 1055), as amended, is amended to read as  
7 follows: “Upon the filing of the petition referred to in para-  
8 graph (1) of this subsection, the court shall have jurisdiction  
9 to affirm the order, or to set it aside in whole or in part,  
10 temporarily or permanently.”

11 SEC. 22. The second and third sentences of subsection  
12 (a) of section 10 of the Fair Labor Standards Act of 1938  
13 (52 Stat. 1065), as amended, are amended to read as fol-  
14 lows: “A copy of such petition shall forthwith be transmit-  
15 ted by the clerk of the court to the Secretary, and thereupon  
16 the Secretary shall file in the court the record of the indus-  
17 try committee upon which the order complained of was en-  
18 tered, as provided in section 2112 of title 28, United States  
19 Code. Upon the filing of such petition such court shall  
20 have exclusive jurisdiction to affirm, modify, or set aside  
21 such order in whole or in part, so far as it is applicable to  
22 the petitioner.”

23 SEC. 23. The fourth, fifth, sixth, and eighth sentences of  
24 subsection (f) of section 5 of the Railroad Unemployment  
25 Insurance Act, as amended (52 Stat. 1100), are amended

1 to read as follows: "Within fifteen days after receipt of  
2 service, or within such additional time as the court may al-  
3 low, the Board shall file with the court in which such peti-  
4 tion has been filed the record upon which the findings and  
5 decision complained of are based, as provided in section 2112  
6 of title 28, United States Code. Upon the filing of such  
7 petition the court shall have exclusive jurisdiction of the  
8 proceeding and of the question determined therein, and shall  
9 give precedence in the adjudication thereof over all other  
10 civil cases not otherwise entitled by law to precedence. It  
11 shall have power to enter a decree affirming, modifying, or  
12 reversing the decision of the Board, with or without remand-  
13 ing the cause for rehearing. \* \* \* No additional evidence  
14 shall be received by the court, but the court may order  
15 additional evidence to be taken before the Board, and the  
16 Board may, after hearing such additional evidence, modify  
17 its findings of fact and conclusions and file such additional or  
18 modified findings and conclusions with the court, and the  
19 Board shall file with the court the additional record."

20 SEC. 24. (a) Subsection (c) of section 409 of the Fed-  
21 eral Seed Act (53 Stat. 1287), is amended to read as  
22 follows:

23 "(c) Until the record in such hearing has been filed in  
24 a court of appeals as provided in section 410, the Secretary  
25 of Agriculture at any time, upon such notice and in such



1 manner as he deems proper, but only after reasonable oppor-  
2 tunity to the person to be heard, may amend or set aside the  
3 report or order, in whole or in part.”

4 (b) The second, third and fourth paragraphs of section  
5 410 of the Federal Seed Act (53 Stat. 1288), are amended  
6 to read as follows:

7 “The clerk of the court shall immediately cause a copy  
8 of the petition to be delivered to the Secretary, and the Sec-  
9 retary shall thereupon file in the court the record in such  
10 proceedings, as provided in section 2112 of title 28, United  
11 States Code. If before such record is filed, the Secretary  
12 amends or sets aside his report or order, in whole or in part,  
13 the petitioner may amend the petition within such time as  
14 the court may determine, on notice to the Secretary.

15 “At any time after such petition is filed the court, on  
16 application of the Secretary, may issue a temporary injunc-  
17 tion restraining, to the extent it deems proper, the person  
18 and his officers, directors, agents, and employees from vio-  
19 lating any of the provisions of the order pending the final  
20 determination of the appeal.

21 “The evidence so taken or admitted and filed as afore-  
22 said as a part of the record, shall be considered by the court  
23 as the evidence in the case. The proceedings in such cases  
24 in the court of appeals shall be made a preferred cause and  
25 shall be expedited in every way.”

1       (c) The first and second sentences of section 411 of  
2 the Federal Seed Act (53 Stat. 1288), are amended to  
3 read as follows:

4       “SEC. 411. If any person against whom an order is  
5 issued under section 409 fails to obey the order, the Secretary  
6 of Agriculture, or the United States, by its Attorney General,  
7 may apply to the court of appeals of the United States,  
8 within the circuit where the person against whom the order  
9 was issued resides or has his principal place of business, for  
10 the enforcement of the order, and shall file the record in such  
11 proceedings, as provided in section 2112 of title 28, United  
12 States Code. Upon such filing of the application the court  
13 shall cause notice thereof to be served upon the person  
14 against whom the order was issued.”

15       SEC. 25. The second and third sentences of subsection  
16 (a) of section 43 of the Investment Company Act of 1940,  
17 as amended (54 Stat. 844), are amended to read as follows:  
18 “A copy of such petition shall be forthwith transmitted by  
19 the clerk of the court to any member of the Commission  
20 or any officer thereof designated by the Commission for  
21 that purpose, and thereupon the Commission shall file in the  
22 court the record upon which the order complained of was  
23 entered, as provided in section 2112 of title 28, United  
24 States Code. Upon the filing of such petition such court  
25 shall have jurisdiction, which upon the filing of the record

1 shall be exclusive, to affirm, modify, or set aside such order,  
2 in whole or in part.”

3 SEC. 26. The second and third sentences of subsection  
4 (a) of section 213 of the Investment Advisers Act of 1940,  
5 as amended (54 Stat. 855), are amended to read as follows:  
6 “A copy of such petition shall be forthwith transmitted by  
7 the clerk of the court to any member of the Commission, or  
8 any officer thereof designated by the Commission for that  
9 purpose, and thereupon the Commission shall file in the court  
10 the record upon which the order complained of was entered,  
11 as provided in section 2112 of title 28, United States Code.  
12 Upon the filing of such petition such court shall have juris-  
13 diction, which upon the filing of the record shall be ex-  
14 clusive, to affirm, modify, or set aside such order, in whole  
15 or in part.”

16 SEC. 27. (a) Paragraph (1) of subsection (b) of  
17 section 632 of the Act of July 1, 1944, as added by the  
18 Hospital Survey and Construction Act (60 Stat. 1048),  
19 is amended to read as follows:

20 “(b) (1) If the Surgeon General refuses to approve  
21 any application under section 625 or section 654, the State  
22 agency through which the application was submitted, or if  
23 any State is dissatisfied with the Surgeon General’s action  
24 under subsection (a) of this section, such State may appeal  
25 to the United States court of appeals for the circuit in which



1 such State is located by filing with such court a notice of  
2 appeal. The jurisdiction of the court shall attach upon the  
3 filing of such notice. A copy of the notice of appeal shall be  
4 forthwith transmitted by the clerk of the court to the Sur-  
5 geon General, or any officer designated by him for that pur-  
6 pose. The Surgeon General shall thereupon file in the  
7 court the record of the proceedings on which he based his  
8 action, as provided in section 2112 of title 28, United States  
9 Code.”

10 (b) The first sentence of paragraph (2) of subsection  
11 (b) of section 632 of the Act of July 1, 1944, as added by  
12 the Hospital Survey and Construction Act (60 Stat. 1048),  
13 is amended to read as follows:

14 “(2) The findings of fact by the Surgeon General, un-  
15 less substantially contrary to the weight of the evidence, shall  
16 be conclusive; but the court, for good cause shown, may re-  
17 mand the case to the Surgeon General to take further evi-  
18 dence, and the Surgeon General may thereupon make new or  
19 modified findings of fact and may modify his previous action,  
20 and shall file in the court the record of the further pro-  
21 ceedings.”

22 SEC. 28. The fourth sentence of subsection (c) of sec-  
23 tion 205 of the Sugar Act of 1948 (61 Stat. 927), is  
24 amended to read as follows: “Within thirty days after the  
25 filing of said appeal the Secretary shall file with the court

1 the record upon which the decision complained of was  
2 entered, as provided in section 2112 of title 28, United  
3 States Code, and a list of all interested persons to whom  
4 he has mailed or otherwise delivered a copy of said notice  
5 of appeal.”.

6 SEC. 29. The second and third sentences of subsection  
7 (a) of section 14 of the Internal Security Act of 1950 (64  
8 Stat. 1001), are amended to read as follows: “A copy of  
9 such petition shall be forthwith transmitted by the clerk of  
10 the court to the Board, and thereupon the Board shall file  
11 in the court the record in the proceeding, as provided in  
12 section 2112 of title 28, United States Code. Upon the  
13 filing of such petition the court shall have jurisdiction of the  
14 proceeding and shall have power to affirm or set aside the  
15 order of the Board; but the court may in its discretion and  
16 upon its own motion transfer any action so commenced to  
17 the United States Court of Appeals for the circuit wherein  
18 the petitioner resides.”.

19 SEC. 30. (a) Subsection (e) of section 110 of the  
20 Internal Security Act of 1950 (64 Stat. 1028), is amended  
21 to read as follows:

22 “(e) Until the record in a case shall have been filed  
23 in a court, as hereinafter provided, the Board may at any  
24 time, upon reasonable notice and in such manner as it

1 shall deem proper, modify or set aside, in whole or in  
2 part, any finding or order made or issued by it.”

3 (b) The third and fifth sentences of subsection (c) of  
4 section 111 of the Internal Security Act of 1950 (64 Stat.  
5 1028), are amended to read as follows: “The Board shall  
6 thereupon file in the court the record of the proceedings  
7 before the Board with respect to the matter concerning which  
8 judicial review is sought, as provided in section 2112 of  
9 title 28, United States Code. \* \* \* Upon the filing of such  
10 petition the court shall have jurisdiction of the proceeding,  
11 which upon the filing of the record with it shall be exclusive,  
12 and shall have power to affirm, modify, or set aside, or to  
13 enforce or enforce as modified the order of the Board.”.

14 (c) The first sentence of subsection (d) of section 111  
15 of the Internal Security Act of 1950 (60 Stat. 1029), is  
16 amended to read as follows:

17 “(d) If either party shall apply to the court for leave  
18 to adduce additional evidence and shall show to the satis-  
19 faction of the court that such additional evidence is material  
20 and that there were reasonable grounds for the failure to  
21 adduce such evidence in the hearing before the Board or  
22 its hearing examiner, the court may order such additional  
23 evidence to be taken before the Board or its hearing examiner  
24 and to be made a part of the record.”



1        SEC. 31. (a) Section 6 of the Act of December 29,  
2        1950 (64 Stat. 1130), is amended to read as follows:

3        “SEC. 6. Unless the proceeding has been terminated  
4        on a motion to dismiss the petition, the agency shall file in  
5        the office of the clerk of the court of appeals in which the  
6        proceeding is pending the record on review, as provided in  
7        section 2112 of title 28, United States Code.”

8        (b) The second sentence of subsection (c) of section 7  
9        of the Act of December 29, 1950 (64 Stat. 1131), is  
10       amended to read as follows: “The agency may modify its  
11       findings of fact, or make new findings, by reason of the  
12       additional evidence so taken and may modify or set aside  
13       its order and shall file in the court such additional evidence,  
14       such modified findings or new findings, and such modified  
15       order or the order setting aside the original order.”.

16       SEC. 32. Subsection (b) of section 207 of the Act of  
17       September 23, 1950, as amended (64 Stat. 974), is  
18       amended by adding at the end of that subsection three  
19       additional sentences reading as follows: “The local educa-  
20       tional agency affected may file with the court a petition  
21       to review such action. A copy of the petition shall be  
22       forthwith transmitted by the clerk of the court to the Com-  
23       missioner, or any officer designated by him for that purpose.  
24       Upon the filing of the petition the court shall have juris-

1 diction to affirm or set aside the action of the Commissioner  
2 in whole or in part.”

3 SEC. 33. The fifth and sixth sentences of subsection  
4 (b) of section 207 of the International Claims Settlement  
5 Act of 1949, as amended (69 Stat. 564), are amended to  
6 read as follows: “Such petition for review must be filed  
7 within sixty days after the date of mailing of the final order  
8 of denial by said designee and a copy shall forthwith be  
9 transmitted to the said designee by the clerk of the court.  
10 Within forty-five days after receipt of such petition for  
11 review, or within such further time as the court may grant for  
12 good cause shown, said designee shall file an answer thereto,  
13 and shall file with the court the record of the proceedings  
14 with respect to such claim, as provided in section 2112 of  
15 title 28, United States Code.”

16 SEC. 34. The second and third sentences of section 9  
17 of the Bank Holding Company Act of 1956 (70 Stat. 138)  
18 are amended to read as follows: “A copy of such petition  
19 shall be forthwith transmitted to the Board by the clerk  
20 of the court, and thereupon the Board shall file in the court  
21 the record made before the Board, as provided in section  
22 2112 of title 28, United States Code. Upon the filing of  
23 such petition the court shall have jurisdiction to affirm, set  
24 aside, or modify the order of the Board and to require the

1 Board to take such action with regard to the matter under  
2 review as the court deems proper.”

3 SEC. 35. This Act shall not be construed to repeal or  
4 modify any provision of the Administrative Procedure Act.

Passed the House of Representatives August 5, 1957.

Attest: RALPH R. ROBERTS,  
*Clerk.*











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## AN ACT

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To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

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AUGUST 6 (legislative day, JUNE 8), 1957

Read twice and referred to the Committee on the  
Judiciary







# Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE  
(For Department Staff Only)

Issued August 4, 1958  
For actions of August 1, 1958  
85th-2nd, No. 131

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HIGHLIGHTS: See page 5.

## SENATE

*Aug. 1, 1958*

1. TRANSPORTATION. Concurred in the House amendment to S. 3916, to extend until June 30, 1960, provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. This bill will now be sent to the President. pp. 14513-14
2. WATER RESOURCES. Passed as reported S. 4021, to establish the U. S. Study Commission on the Savannah, Altamaha, St. Mary's Apalachicola-Chattahoochee, and Alabama-Coosa River Basins. pp. 14511-13
3. DEFENSE PRODUCTION. The Banking and Currency Committee reported without amendment S. 4162, to amend the Defense Production Act to provide for the cancellation of certain productive facility loans (S. Rept. 2091). p. 14496
4. ADMINISTRATIVE ORDERS. The Judiciary Committee ordered reported without amendment H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the laws relating thereto. p. D774

5. HUMANE SLAUGHTER. Sen. Humphrey commended the reaction of the American Meat Institute to passage of the humane slaughter bill, and inserted their news release in which they stated they would work to aid in providing for humane slaughter and discussed the provisions of the bill. pp. 14517-18
6. CIVIL DEFENSE. The name of Sen. Cotton was added as cosponsor to S. 4055, to establish survival depots for civil defense evacuees in time of war. p. 14499
7. FOOD DISTRIBUTION. Sen. Flanders criticized the cutting off of CARE packages to Egyptian children, and Sen. Humphrey concurred. pp. 14500-1
8. FARM PROGRAM. Sen. Humphrey inserted a letter from the Cochran County, Tex., Farm Bureau, which he stated showed opposition to the national Farm Bureau position. The letter urged CCC and price support, opposed free markets, pointed to the processor as the central cause of higher prices, and urged that cotton legislation be delayed until after the fall referendum. pp. 14504-05
9. LEGISLATIVE PROGRAM. Sen. Johnson announced that there would be a call of the calendar for unobjected-to measures on Mon., Aug. 4. p. 14495
10. ADJOURNED until Mon., Aug. 4. p. 14519

HOUSE

11. FARM PROGRAM. The "Daily Digest" states that the Agriculture Committee "adopted, by a vote of 28-0, various amendments to S. 4071, re marketing programs for various agricultural commodities" (p. D775). Rep. McCormack announced that this bill will be considered under suspension of the rules today, Aug. 4 (p. 14539). The Agriculture Committee was granted until midnight Sat. "to file reports on certain bills" (p. 14540). It is our understanding that the bill was reported during recess, pursuant to this authority.
12. FOOD STAMPS; FARM LABOR. The Agriculture Committee ordered reported H. R. 13067, to provide for the establishment of a food stamp plan for the distribution of \$1 billion worth of surplus food commodities a year to needy persons and families in the U. S., and H. R. 10360, with amendment, to continue for 2 years the authority for the Attorney General to permit the importation of aliens for agricultural employment. p. D775
13. SALINE WATER; RECLAMATION. A subcommittee of the Interior and Insular Affairs Committee ordered reported S. J. Res. 135, with amendment, to provide for the construction of a full-scale demonstration plant for the production, from sea waters, of water suitable for beneficial purposes, and S. 4009, to increase the amount authorized to be appropriated for the Washoe reclamation project, Nev. and Calif. p. D776
14. FAIR TRADE. A subcommittee of the Interstate and Foreign Commerce Committee ordered reported with amendment H. R. 10527, to amend the Federal Trade Commission Act so as to make it lawful to fix minimum resale prices and to enforce them by contracts. p. D776
15. SURPLUS PROPERTY. A subcommittee of the Government Operations Committee ordered reported with amendment H. R. 7929, to permit the donation of surplus property to voluntary fire-fighting organizations. p. D776







22. RESEARCH. Passed as reported S. 4039, to authorize the head of any Government agency now making contracts for research to grant funds for the support of such research. pp. 14623-4
23. PERSONNEL. Passed as reported H. R. 7710, to provide for the lump sum payment of all accumulated and accrued annual leave of deceased employees. p. 14626
24. MINERALS. At the request of Sen. Talmadge, passed over S. 4146, to provide for incentive payments for the production of certain minerals. p. 14626  
The Interior and Insular Affairs Committee reported without amendment S. Res. 225, to extend until Jan. 31, 1959, the time for filing a report on the study of strategic raw materials in the Western hemisphere (S. Rept. 2175). p. 14546
25. FISHERIES; EXTENSION SERVICE. Passed as reported S. 2973, to establish a fishery extension service in the Fish and Wildlife Service to carry out co-operative fishery extension work with the States. pp. 14627-8
26. FORESTRY. Passed without amendment the following bills:  
S. 3682, to authorize the Secretary to convey certain national forest lands in Ariz. to the Univ. of Ariz. p. 14629  
H. R. 6038, to authorize transfers of land between the Sequoia National Forest and the Kings Canyon National Park, Calif. This bill will now be sent to the President. p. 14630  
H. R. 6198, to authorize the transfer of not more than 10 acres of land from the Sequoia National Park to the Sequoia National Game Refuge in Sequoia National Forest, Calif. This bill will now be sent to the President. p. 14630  
The Agriculture and Forestry Committee reported with amendment S. 4053, to extend the boundaries of Siskiyou National Forest (S. Rept. 2171). p. 14546
27. DEFENSE PRODUCTION. Began debate on S. 4162, to provide for the cancellation of certain uncollectible loans and operating losses under Title III of the Defense Production Act, to increase (in effect) the borrowing authority for the defense stockpile \$300 million. pp. 14631-2, 14644-50
28. MONOPOLIES. At the request of Sen. Talmadge, passed over S. 11, to amend the Robinson-Patman Act with reference to equality of opportunity. p. 14618
29. WATER RESOURCES. At the request of Sen. Talmadge, passed over S. 3185, to promote fish and wildlife conservation by requiring prior approval by the Secretary of the Interior of licenses issued under the Federal Power Act. p. 14623
30. ADMINISTRATIVE ORDERS. The Judiciary Committee reported without amendment H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the laws relating thereto (S. Rept. 2129). p. 14545
31. TOBACCO. The Agriculture and Forestry Committee reported with amendment S. Res. 334, to direct the committee to study marketing practices relative to loose and tied tobacco (S. Rept. 2163); which was then referred to the Rules and Administration Committee. p. 14546  
The Agriculture and Forestry Committee reported without amendment H. R. 12840, to provide a single acreage allotment for Va. sun-cured and Va. fire-cured tobaccos if farmers vote approval in a referendum (S. Rept. 2162) p. 14546



The Interior and Insular Affairs Committee ordered reported without amendment S. 4009, to increase the amount authorized to be appropriated for the Washoe reclamation project, Nev. and Calif., and with amendment S. 3448, to permit the Secretary of the Interior to authorize increases in the 160-acre limitation on the Seedskaadee Reclamation project. p. D789

The Interior and Insular Affairs Committee reported without amendment H. R. 13523, to authorize the construction and maintenance by Interior of the Fryingpan-Arkansas reclamation project (H. Rept. 2427). pp. 14768-69

12. WHEAT; CORN MEAL. Passed without amendment H. R. 13268, to authorize CCC to purchase flour and corn meal for donation instead of having such products processed from its own stocks. pp. 14691-92
13. DESERT-LAND ENTRIES. Passed with amendments S. 359, to permit desert land entries on disconnected tracts of land aggregating less than 320 acres and form a compact unit. p. 14696
14. TRANSPORTATION. Passed under suspension of the rules H. R. 8382, to provide for the licensing of independent foreign freight forwarders (pp. 14747-48); and H. R. 474, to repeal Sec. 217 of the Merchant Marine Act of 1936 relating to the coordination of the forwarding and servicing of water-borne export and import foreign commerce of the U. S. (p. 14748).
15. FRUITS AND NUTS. Voted 40 to 33 to suspend the rules and pass H. R. 11056, to amend the Agricultural Marketing Agreement Act so as to extend restrictions on certain imported citrus fruits, dried fruits, walnuts, and dates. At the request of Rep. McCormack further consideration of the bill was postponed until Wed., Aug. 6. pp. 14754-60
16. WATERSHEDS. Received from the Budget Bureau plans for works of improvement pertaining to the following watersheds: Furnace Brook-Middle River, Conn. and Mass.; Busseron, Ind., and Crooked Creek, Iowa; to Agriculture Committee. p. 14768
17. RADIO FREQUENCIES. The Interstate and Foreign Commerce Committee reported with amendments S. J. Res. 106, to establish a commission to investigate the utilization of the radio and television frequencies allocated to agencies and instrumentalities of the Federal Government (H. Rept. 2355). p. 14768
18. SALINE WATER. The Interior and Insular Affairs Committee ordered reported with amendment S. J. Res. 135, to provide for the construction of demonstration plants for the production, from saline waters, of water suitable for agricultural, industrial and consumptive uses. p. D789
19. MILITARY CONSTRUCTION. Conferees agreed to file a conference report on H. R. 13015, the military construction authorization bill. p. D790
20. PERSONNEL. Passed over, at the request of Rep. Ford, H. R. 1168, to restore the pay of officers or employees to the level of the grade held before downgrading in certain cases. p. 14684

SENATE

21. PRICE SUPPORTS. Sen. Proxmire criticized the cost of the present price support farm program and inserted an economic analysis of the cost of his bill, S. 2952, which concluded that it would be less expensive than the present program. pp. 14642-3



## AUTHORIZING ABBREVIATED RECORDS IN REVIEWING ADMINISTRATIVE AGENCY PROCEEDINGS

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AUGUST 4, 1958.—Ordered to be printed

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Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany H. R. 6788]

The Committee on the Judiciary, to which was referred the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to save time and expense by permitting the several courts of appeals to adopt rules authorizing the abbreviation of the transcript and other parts of the record made before Federal administrative agencies when the orders of those agencies are to be reviewed by the courts of appeals. If review proceedings have been instituted in two or more courts with respect to the same order, the bill would require the Federal administrative agency involved to file the record in that court in which the proceeding was first instituted, but in the interest of justice and for the convenience of the parties, such court may thereafter transfer the proceedings to another court of appeals.

## STATEMENT

## 1. ORIGIN AND PRIOR CONSIDERATION

This proposal emanates from the Judicial Conference of the United States. It was submitted to the Congress after substantial consideration by the Committee on Revision of the Laws of the Judicial Conference and the Judicial Conference itself. After submission, it was the subject of a hearing before a subcommittee of the House Committee on the Judiciary on May 17, 1956, and subjected to agency comments. It was thereafter revised and reintroduced and again subjected to review by the administrative agencies. Following this, the Judiciary Committee after adopting several amendments, reported the bill to the House of Representatives, which later approved it.

The bill has been approved in principle by the American Bar Association, and it incorporates a recommendation of the President's Conference on Administrative Procedure. It likewise carries the approval of the Judicial Conference of the United States.

## 2. DISCUSSION AND SUMMARY

Most of the present statutes which provide for judicial review or enforcement by the courts of appeals of the orders of administrative agencies require that a transcript of the entire record of the proceedings before the agency be prepared by the agency and physically filed with the court. Such a requirement frequently operates to delay court proceedings and to impose upon the agency large and unnecessary expenditures of money and effort. In many types of cases the agency record involves persons other than the petitioner for review. The record may, therefore, be unnecessarily voluminous and much of it irrelevant to the review.

The object of the instant legislation is to eliminate the filing of the entire record except in those instances where it is required for an adequate determination or where the abbreviation of the record would prove more costly than the transmission of the entire record. This objective could have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. Such a course, however, would have left a residuum of doubt as to whether specific provisions would have been repealed by implication. This legislation avoids that difficulty by direct amendment of the many existing statutes providing for judicial review of administrative determinations and orders.

The bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency within the contemplation of this measure, or to the review of such agency orders as are by law reviewable by the district courts, such as exclusion and deportation orders.

Many of the statutes providing for the enforcement or review of agency orders provide that the courts of appeals acquire jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired by the courts until the filing of the transcript of the record. This latter provision has sometimes proved both illogical and unwise—illogical, since it places authority within the Federal agency to delay the acquisition of full jurisdic-

tion by a Federal appellate court; and unwise, since it raises a serious question concerning the extent of the court's authority to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time when the record is actually filed. Accordingly, this legislation proposes to amend various statutes to provide that in all cases the reviewing court shall acquire jurisdiction upon the filing of a petition on review. However, the bill further provides that although jurisdiction shall be immediately acquired by the court upon the filing of a petition for review, the existing jurisdiction of agencies, pending filing of the record, is preserved and until such filing the jurisdiction shall be concurrent and shall become exclusive in the appellate court only upon the filing of the record. This provision was added in order to make clear that up to the filing of the record or transcript, an agency may retain jurisdiction in order to permit that agency to entertain motions for additional processes before the administrative agency, such as the modification or setting aside of an order.

This legislation accomplishes its objective of permitting the filing of abbreviated records by adding a new section, section 2112, to title 28, of the United States Code, and amending the several statutes relating to appeals from administrative agencies to bring them into conformity with the provisions of this new section of title 28. The bill seeks to accomplish its purposes in the following ways:

- (1) By giving the courts of appeals, with the approval of the Judicial Conference, authority to adopt rules on the subject, which are to be so far as practicable uniform in all courts.

- (2) By providing for the abbreviation of the record to include only those materials which are relevant to the issues involved as determined by the rules or special orders of the court or by stipulation of the parties.

- (3) By providing in appropriate cases which can be disposed of on the pleadings, such as consent decrees, that no record at all need be filed.

- (4) By permitting the entire record to be filed in those cases where the parties find it will be less expensive and time consuming to do so than to select and copy portions of it for filing. The selection of the relevant portions of the record to be printed in the petitioner's appendix can sometimes better be done at the brief-writing stage.

- (5) By providing that the courts may permit an agency to file in court merely a list of the materials in the record while retaining in its custody the materials themselves until any such materials are actually needed and sent for by the court.

- (6) By authorizing the agency, if it finds it better to do so, to transmit original papers, rather than copies, as the record on review. These are, of course, to be returned to the agency upon the termination of the proceeding, or earlier if needed.

The bill would further accomplish its objectives by amending the various statutes now providing for the review and enforcement of agency orders so as to bring about uniformity in their provisions by—

- (7) Providing that the record shall be filed in each case as provided in the new section 2112 of title 28;



(8) Providing that the jurisdiction of the court of appeals shall attach in all cases upon the filing of the petition for review or enforcement, while preserving the concurrent jurisdiction of the agency, in appropriate cases, until the record is filed; and

(9) Providing that in all cases it shall be the duty of the clerk of the court to transmit to the agency a copy of the petition for review which has been filed with the court.

In addition, the bill meets the problem which is presented when petitions by different aggrieved parties to review the same agency order are filed in different circuits. It does so by providing that the court of appeals in which the first petition is filed shall have exclusive jurisdiction of all the petitions but with power to transfer them all to another court of appeals if the convenience of the parties and the interests of justice so require. At present the agency, by selecting the court in which it files the record, determines which court shall have jurisdiction.

### CONCLUSION

With the advent of an increasing number of bureaus and agencies within the Federal Government, the Congress has seen fit to authorize judicial review of the orders of such agencies and bureaus in order to afford maximum protection to the interests of the Government and the individual or corporate litigant. In many cases this review function has been placed upon the Federal courts of appeals, thereby increasing the workload of that part of the Federal court system. Part of that workload involves the perusal of records filed in connection with such appeals. These records are frequently voluminous and are not edited, so as to encompass only information relevant to the points at issue. The reduction of such a record to its pertinent parts, as proposed here, should in most cases serve as an aid to the expedition of appeals from orders of administrative agencies. Thus, adoption of this measure is expected to facilitate the work of the Federal appellate courts. Moreover, this legislation is likewise expected to occasion a saving in time and expense to the Federal Government in its role as litigant. The cost of preparing the transcript in nearly all cases rests with the agency and is, therefore, a charge upon the Federal Treasury. Consequently, any reduction in the size of the record which must be filed could result in reducing the cost of litigation to the Government.

In addition to these considerations, the authority conferred by the bill contains sufficient flexibility to permit an appellate court to adapt its procedures to the exigencies of cases presented to it. Thus, if a litigant, either an individual or an agency, determined that the cause of justice, or considerations of time or expense, require the submission of a full record, that may be done. The purpose of the proposal is expedition, but not expedition at the expense of justice.

The bill was the subject of thorough consideration in the Judicial Conference prior to its submission to the Congress, and since its submission has been reviewed in detail by the administrative agencies. It is also appropriate to note that the agency primarily concerned with litigation involving the Federal Government, the Department of Justice, considers the proposal "a laudable effort to eliminate un-

necessary expenditures in time and money in the review of agency orders by the courts of appeals." In short, the Department of Justice recommends enactment of the measure.

The acceptance and approval of this bill by the bench and the bar indicates that it may reasonably be calculated to accomplish the worthwhile objective which it is designed to accomplish. Consequently, the committee recommends favorable consideration of the legislation.

Attached to this report is the letter of transmittal of the Administrative Office of United States Court, dated April 5, 1957, and the report of the Department of Justice under date of June 10, 1957, to which reference was made earlier. The other agency reports on the bill are incorporated in House Report No. 842 of the 85th Congress, 1st session. In the interests of brevity they may be considered as having been incorporated by reference in this report.

#### VIEWS OF EXECUTIVE DEPARTMENTS

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,  
*Washington, D. C., April 5, 1957.*

HON. SAM RAYBURN,  
*Speaker of the House of Representatives,*  
*Washington, D. C.*

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States, I transmit herewith for the consideration of the Congress a draft of a bill concerning the record on review or enforcement of orders of administrative agencies by the courts of appeals.

The purpose of the proposed legislation is to promote economy in and to facilitate the review by the courts of appeals of orders of administrative agencies subject to review by the courts of appeals. It would permit the agencies pursuant to rules adopted by the several courts of appeals, with the approval of the Judicial Conference of the United States, to send to the court an abbreviated record where the whole record is not necessary and authorize the use of the original papers in lieu of a transcript, the papers to be returned to the agency upon the completion of review proceedings and to permit the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court all such materials transmitting the same or any part thereof to the court when and as required by the court.

The bill is the product of approximately 4 years' work by the Judicial Conference Committee on the Revision of the Laws, of which Circuit Judge Albert B. Maris of the third circuit is chairman, during the course of which affected agencies have been consulted and views of the judges through the country solicited and considered. The Judicial Conference of the United States has approved the proposed legislation upon consideration of the report and recommendation of its committee.

The bill would add to chapter 133 of title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative



agencies. Among the principal provisions of the new section are the following:

Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies in which the applicable statute does not specifically prescribe these matters. The rules could authorize the agency to file in the court a certified list of the materials comprising the record and retain or hold for the court the materials transmitting all or parts thereof to the court as required. It would provide that if proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."

The bill would provide that the record to be filed in the court of appeals should consist of the order in question, the findings or report upon which it was based, and pleadings, evidence, and proceedings before the agency concerned, or such portions thereof as the rules of the court of appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding. The agency involved might at its option, if the rules of the court of appeals in which the proceeding was pending did not require the printing of the entire record, file in the court the entire record without abbreviation.

This is in accordance with the pattern of a late congressional enactment on the subject, the act of December 29, 1950, relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the court of appeals by delaying the filing of the record. Various other perfecting admendments of existing statutes are included in the bill.

It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the courts of appeals of orders of administrative agencies, will be conductive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted.

Sincerely yours,

ELMER WHITEHURST,  
*Acting Director.*



JUNE 10, 1957.

HON. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders and for other purposes.

This bill would authorize the several courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, boards, commissions and officers, in which the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. It would also provide for abbreviation of such records pursuant to rules of court, stipulation of the parties, or court order. The bill would permit an agency which issued an order to file the original papers in lieu of a transcript and to regain possession of them upon completion of the proceedings in the court of appeals. It would also incorporate the foregoing provisions in a number of existing statutes dealing with review of administrative orders by courts of appeals.

The Department of Justice considers the proposal a laudable effort to eliminate unnecessary expenditures in time and money in the review of agency orders by the courts of appeals. Accordingly, it recommends enactment of the measure. It is noted that at its annual meeting in September 1956, the Judicial Conference reaffirmed its previously expressed approval of this legislation with a minor amendment.

Some concern has been expressed that the broad language of the proposed section 2112 (a) may possibly be construed to apply to certain proceedings not intended to be covered, for example, decisions of the Tax Court and administrative orders for the exclusion and deportation of aliens entered under the provisions of the Immigration and Nationality Act of 1952 (66 Stat. 1166, 8 U. S. C. A. (1101 et seq.)). As you know, Tax Court decisions are presently subject to review by the courts of appeals pursuant to section 7482 of the Internal Revenue Code of 1954 (26 U. S. C. 7482); exclusion and deportation orders, to the extent that judicial review is permissible, are uniformly reviewable in the first instance in the district courts. The apprehension arises because of the broad language of section 2112 (a) that it shall apply to "all proceedings instituted in the courts of appeals to \* \* \* review \* \* \* orders of administrative agencies, boards, commissions, and officers \* \* \*." In this connection it might be both desirable and appropriate to incorporate in the committee reports express language that the bill is not intended to apply to decisions of the Tax Court or to exclusion and deportation orders. Although there would appear to be little basis for believing that the bill in its present form could reasonably be construed to extend to

such proceedings, it may nevertheless be wise to dispel any possible ambiguity in this regard.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,  
*Deputy Attorney General.*

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

### TITLE 28. UNITED STATES CODE

#### CHAPTER 133. REVIEW—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

2112. *Record on review and enforcement of agency orders.*

\* \* \* \* \*

§ 2112. *Record on review and enforcement of agency orders.*

(a) *The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.*



(b) *The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included, therein or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplemental to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.*

(c) *The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.*

(d) *The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district court.*



SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112): "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission*, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein *concurrently with the Commission until the filing of the record* and shall have power to make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113):

"(d) [The] *Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive*" (15 U. S. C., § 45, Federal Trade Commission).

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127): "Until [a transcript of] the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127):

"If such person fails or neglects to obey such order of the Commission or Board while the same is in effect the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall [certify and] file [with its application a transcript of] the [entire] record in the proceeding, [including all the testimony taken and the report and order of the Commission or Board] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon such person, and thereupon shall

have jurisdiction of the proceeding and of the question determined therein, *concurrently with the Commission or Board until the filing of the record* and shall have power to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission or Board."

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission or Board* and thereupon the Commission or Board [forthwith] shall [certify and] file in the court [a transcript of] the record in the proceeding, as [hereinbefore] provided in section 2112 of title 28, *United States Code*. Upon the filing of [the transcript] *such petition* the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, *determined as provided in section 10 (e) of the Administrative Procedure Act*, shall in like manner be conclusive."

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128):

"[The] *Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive*" (15 U. S. C., sec. 21, Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Board of Governors of the Federal Reserve System).

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Post Office Department* and thereupon the said department [forthwith] shall [certify and] file in the court [a transcript of] the record [and testimony], *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] *petition* the court shall have jurisdiction to affirm, set aside, or modify the order of the department" (39 U. S. C., sec. 576, Postmaster General (District of Columbia Circuit only)).

SEC. 6 (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 193, Secretary of Agriculture).

(b) Subsections (b), (c) and (d) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in*



*section 2112 of title 28, United States Code.* If before such [transcript] record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

“(c) At any time after such [transcript] petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.”

“(d) The evidence so taken or admitted [duly certified] and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.” (7 U. S. C., sec. 194, Secretary of Agriculture.)

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162):

“(h) The court of appeals shall have [exclusive] jurisdiction, *which upon the finding of the record with it shall be exclusive*, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section [240 of the Judicial Code] *1254 of title 28*, if such writ is duly applied for within sixty days after entry of the decree” (7 U. S. C., sec. 194, Secretary of Agriculture).

SEC. 7. (a) The third and fourth sentences of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001): “The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings [including the notice to the board of trade, a copy of the charges, the evidence, and the report and order], *as provided in section 2112 of title 28, United States Code.* The testimony and evidence taken or submitted before the said Commission, duly [certified and] filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.” (7 U. S. C., sec. 8, Contract Market Commission.)

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended: “A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture* [by delivering such copy to him] and thereupon the Secretary of Agriculture shall [forthwith certify and] file in the court [a transcript of] the record theretofore made, [including evidence received] *as provided in section 2112 of title 28, United States Code.* Upon the filing of the [transcript] petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive” (7 U. S. C., sec. 9, Secretary of Agriculture).

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended



(49 Stat. 865): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of the Treasury, or [upon] any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part" (19 U. S. C., sec. 1641, Secretary of the Treasury).

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code*" (15 U. S. C., sec. 77i, Securities and Exchange Commission).

SEC. 10. The second and third sentences of subsection (a) of section 25 of the Securities Exchange Act of 1934 (48 Stat. 901): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have [exclusive] jurisdiction, *which upon the filing of the record shall be exclusive,* to affirm, modify, and enforce or set aside such order, in whole or in part." (15 U. S. C. sec. 78y, Securities and Exchange Commission.)

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002): "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in the proceedings held before it under this section, [the charges, the evidence, and the order revoking the grant] *as provided in section 2112 of title 28 United States Code*" (19 U. S. C., sec. 81r, Foreign Trade Zone Board).

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719): "Within thirty days after the filing of an appeal, the Commission shall file with the court [a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order] *the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code* (47 U. S. C., sec. 402, Federal Communications Commission (District of Columbia Circuit only)).

SEC. 13. (a) (Subsection (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147):

"(d) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time,

upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth, and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147) :

"(e) The Board shall have power to petition any court of appeals of the United States [(including the United States Court of Appeals for the District of Columbia)], or if all the courts of appeals to which application may be made are in vacation, any district court of the United States [(Including the District Court of the United States for the District of Columbia)], within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall [certify and] file in the court [a transcript of] the [entire] record in the proceedings [including the pleadings and testimony upon which such order was entered and the findings and order of the Board], *as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition,* the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter [upon the pleadings, testimony, and proceedings set forth in such transcript] a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its [members] *member,* agent, or agency, and to be made a part of the [transcript] *record.* \* \* \* [The] *Upon the filing of the record with it* the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in [sections 239 and 240 of the Judicial Code, as amended [(U. S. C., title 28, secs. 346 and 347)]] *section 1254 of title 28.*"

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148) : "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to* the Board, and thereupon the aggrieved party shall file in the court [a transcript of] the [entire] record in the proceeding, certified by the Board [including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board], *as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition,* the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same



**[exclusive]** jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive" (29 U. S. C., sec. 160, National Labor Relations Board).

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended: "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part*" (27 U. S. C., sec. 204, Secretary of the Treasury).

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834): "A copy of such petition shall be forthwith **[served upon]** *transmitted by the clerk of the court to any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive] jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part* (15 U. S. C., sec. 79x, Securities and Exchange Commission).

SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended, (49 Stat. 860), last sentence: "*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at anytime, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*"

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860): "A copy of such petition shall forthwith be **[served upon]** *transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such [transcript] petition such court shall have [exclusive] jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part*" (16 U. S. C. sec. 825 l, Federal Power Commission).

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 961): "A copy of such petition shall be forthwith **[served upon]** *transmit-*



ted by the clerk of the court to any member of the [Board] Commission, or [upon] any officer thereof designated by the [Board] Commission for that purpose, and thereupon the [Board] Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order.” (46 U. S. C., sec. 1181 (b), Federal Maritime Board (District of Columbia Circuit only)).

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024) :

“(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon [certify and] file in the court [a transcript of] the record, if any, upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*” (49 U. S. C., sec. 646, Civil Aeronautics Board).

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), last sentence: “*Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.*”

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831) : “A copy of such petition shall forthwith be [served upon] transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall [certify and] file with the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code*. Upon the filing of such petition [transcript] such court shall have [exclusive] jurisdiction, *which upon the filing of the record with it shall be exclusive*, to affirm, modify, or set aside such order in whole or in part” (15 U. S. C., sec. 717r, Federal Power Commission).

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515) :

“(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith [served upon] transmitted by the clerk of the court to the Secretary, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, *as provided in section 2112 of title 28, United States Code*. Upon [such] the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part.”

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515) :

“(3) In the case of a petition with respect to an order such subsection (1), a copy of the petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Secretary of Agriculture, or [upon] any officer designated by him for that purpose, and thereupon the Secretary shall [certify and] file in the court [a transcript] the record of the proceedings [and the record] on which he based his order, as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition,* the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part” (21 U. S. C., sec 346a, Secretary of Health, Education, and Welfare, Secretary of Agriculture).

SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: *A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.* [The summons and petition may be served at any place in the United States.] The Secretary [promptly upon service of the summons and petition] *thereupon shall [certify and] file in the court the [transcript] record of the proceedings [and the record] on which the Secretary based his order, as provided in section 2112 of title 28, United States Code.”*

(b) The first sentence of paragraph 3 of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended: *“Upon the filing of the petition referred to in paragraph (1) of this subsection, the [The] court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently.”* (21 U. S. C., sec. 371, Secretary of Health, Education, and Welfare.)

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended: *“A copy of such petition shall forthwith be [served upon] transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall [certify and] file in the court [a transcript of] the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner.” (29 U. S. C., sec. 210, Secretary of Labor.)

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100): *“Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall [certify and] file with the court in which such petition has been filed [a transcript of] the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code.* Upon [such] *the filing of such petition* the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all over civil cases not otherwise entitled by law to precedence. It shall have power to enter [upon the pleadings and transcript of the record,] a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for



rehearing. \* \* \* No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court [a transcript of] the additional record" (45 U. S. C., sec. 355, Railroad Retirement Board).

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287):

"(c) Until [a transcript of] the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part" (7 U. S. C., sec. 1599, Secretary of Agriculture).

(b) The second, third, and fourth paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288):

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall [forthwith prepare, certify, and] *thereupon* file in the court [a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, and the report and order] *as provided in section 2112 of title 28, United States Code*. If before such [transcript] record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such [transcript] petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal.

"The evidence so taken or admitted [, duly certified] and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way." (7 U. S. C., sec. 1600, Secretary of Agriculture.)

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288):

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall [certify and] file [with its application a full and accurate transcript of] the record in such proceedings, [including the complaint, the evidence, the report, and the order] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the application [and transcript] the court shall cause notice thereof to be served upon the person against whom the order was issued?" (7 U. S. C., sec. 1601, Secretary of Agriculture).



SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to* any member of the Commission or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have [exclusive] jurisdiction, *which upon the filing of the record shall be exclusive*, to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80a-42, Securities and Exchange Commission).

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to* any member of the Commission, or [upon] any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall [certify and] file in the court [a transcript of] the record upon which the order complained of was entered, *as provided in section 2112 of title 28, United States Code.* Upon the filing of such [transcript] *petition* such court shall have [exclusive] jurisdiction, *which upon the filing of the record shall be exclusive*, to affirm, modify, or set aside such order, in whole or in part" (15 U. S. C., sec. 80b-13, Securities and Exchange Commission).

SEC. 27. (a) Paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located [the summons and notice of appeal may be served at any place in the United States] *by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose.* The Surgeon General shall [forthwith certify and] *thereupon* file in the court the [transcript] *record* of the proceedings [and the record] on which he based his action, *as provided in section 2112 of title 28, United States Code.*

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048):

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, shall [certify to] *file in* the court the [tran-

script and] record of the further proceedings" (42 U. S. C., sec. 291j, Public Health Service).

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927): "Within thirty days after the filing of said appeal the Secretary shall file with the court the [originals or certified copies of all papers and evidence presented to him upon the hearing involved, a like copy of his decision thereon, a full statement in writing of the facts and grounds for his decisions as found and given by him] *record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal*" (7 U. S. C., sec. 1115, Secretary of Agriculture (District of Columbia Circuit only)).

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to the Board, and thereupon the Board shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all evidence taken and the report and order of the Board] as provided in section 2112 of title 28, United States Code. [Thereupon] Upon the filing of such petition* the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides" (50 U. S. C., sec. 793, Subversive Activities Control Board).

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028):

"(e) Until [a transcript of] the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it" (50 U. S. C., sec. 820, Detention Review Board).

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028): "The Board shall thereupon file in the court [a duly certified transcript of] the [entire] record of the proceedings before the Board with respect to the matter concerning which judicial review is sought, [including all evidence upon which the order complained of was entered, the findings and order of the Board] *as provided in section 2112 of title 28, United States code. \* \* \* [Thereupon] Upon the filing of such petition* the court shall have jurisdiction of the proceeding, *which upon the filing of the record with it shall be exclusive*, and shall have power to affirm, modify, or set aside, or to enforce as modified the order of the Board" (50 U. S. C., sec. 821, Detention Review Board).

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029):

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing ex-



aminer and to be made a part of the [transcript] record" (50 U. S. C., sec. 821, Detention Review Board).

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130):

"SEC. 6. [Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless] *Unless* the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, [duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing] *as provided in section 2112 of title 28, United States Code*" (5 U. S. C., sec. 1036, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131): "The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file [a certified transcript of] *in the court* such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order" (5 U. S. C., sec. 1037, Federal Communications Commission, Secretary of Agriculture, Federal Maritime Board, Maritime Administration, Atomic Energy Commission).

SEC. 32. Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974), last three sentences: "*The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part.*" (20 U. S. C., sec. 277, Commissioner of Education).

SEC. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564): "Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy *shall forthwith be transmitted to the said designee by the clerk of the court* [must be served on the said designee]. Within forty-five days after receipt [service] of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall [certify and] file with the court [a transcript of] the [entire] record of the proceedings with respect to such claim, *as provided in section 2112 of title 28, United States Code.*" (22 U. S. C., sec. 1631f, Attorney General).

SEC. 34. The second and third sentences of section 9 of the Bank Holding Company Act of 1956 (70 Stat. 138):



"A copy of such petition shall be forthwith *transmitted to the Board by the clerk of the court* [served upon the Board], and thereupon the Board shall [certify and] file in the court [a transcript of] the record made before the Board, *as provided in section 2112 of title 28, United States Code*. Upon the filing of *such petition* [the transcript] the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper." (12 U. S. C., sec. 1848, Board of Governors of the Federal Reserve System).

SEC. 35. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.









Calendar No. 2178

85TH CONGRESS  
2D SESSION

# H. R. 6788

[Report No. 2129]

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IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JULY 8), 1957

Read twice and referred to the Committee on the Judiciary

AUGUST 4, 1958

Reported by Mr. EASTLAND, without amendment

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## AN ACT

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

- 1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That the analysis of chapter 133 of title 28 of the United  
4        States Code, immediately preceding section 2101 of such  
5        title, is amended by inserting at the end thereof the following  
6        additional item:

“2112. Record on review and enforcement of agency orders.”

1       “SEC. 2. Chapter 133 of title 28 of the United States  
2 Code is amended by inserting at the end of such chapter im-  
3 mediately following section 2111 an additional section, as  
4 follows:

5       “§ 2112. Record on review and enforcement of agency orders

6       “(a) The several courts of appeals shall have power  
7 to adopt, with the approval of the Judicial Conference of the  
8 United States, rules, which so far as practicable shall be  
9 uniform in all such courts prescribing the time and manner of  
10 filing and the contents of the record in all proceedings insti-  
11 tuted in the courts of appeals to enjoin, set aside, suspend,  
12 modify, or otherwise review or enforce orders of administrative  
13 agencies, boards, commissions, and officers, to the extent  
14 that the applicable statute does not specifically prescribe  
15 such time or manner of filing or contents of the record. Such  
16 rules may authorize the agency, board, commission, or officer  
17 to file in the court a certified list of the materials comprising  
18 the record and retain and hold for the court all such materials  
19 and transmit the same or any part thereof to the court, when  
20 and as required by it, at any time prior to the final determi-  
21 nation of the proceeding, and such filing of such certified list  
22 of the materials comprising the record and such subsequent  
23 transmittal of any such materials when and as required shall  
24 be deemed full compliance with any provision of law requir-

1 ing the filing of the record in the court. The record in such  
2 proceedings shall be certified and filed in or held for and  
3 transmitted to the court of appeals by the agency, board,  
4 commission, or officer concerned within the time and in the  
5 manner prescribed by such rules. If proceedings have been  
6 instituted in two or more courts of appeals with respect to the  
7 same order the agency, board, commission, or officer con-  
8 cerned shall file the record in that one of such courts in which  
9 a proceeding with respect to such order was first instituted.  
10 The other courts in which such proceedings are pending  
11 shall thereupon transfer them to the court of appeals in  
12 which the record has been filed. For the convenience of  
13 the parties in the interest of justice such court may there-  
14 after transfer all the proceedings with respect to such order  
15 to any other court of appeals.

16 “(b) The record to be filed in the court of appeals in  
17 such a proceeding shall consist of the order sought to be re-  
18 viewed or enforced, the findings or report upon which it is  
19 based, and the pleadings, evidence, and proceedings before  
20 the agency, board, commission, or officer concerned, or such  
21 portions thereof (1) as the said rules of the court of appeals  
22 may require to be included therein, or (2) as the agency,  
23 board, commission, or officer concerned, the petitioner for  
24 review or respondent in enforcement, as the case may be,  
25 and any intervenor in the court proceeding by written stip-



1   ulation filed with the agency, board, commission, or officer  
2   concerned or in the court in any such proceeding may con-  
3   sistently with the rules of such court designate to be included  
4   therein, or (3) as the court upon motion of a party or, after  
5   a prehearing conference, upon its own motion may by order  
6   in any such proceeding designate to be included therein.  
7   Such a stipulation or order may provide in an appropriate case  
8   that no record need be filed in the court of appeals. If, how-  
9   ever, the correctness of a finding of fact by the agency, board,  
10   commission, or officer is in question all of the evidence before  
11   the agency, board, commission, or officer shall be included in  
12   the record except such as the agency, board, commission, or  
13   officer concerned, the petitioner for review or respondent in  
14   enforcement, as the case may be, and any intervenor in the  
15   court proceeding by written stipulation filed with the agency,  
16   board, commission, or officer concerned or in the court agree  
17   to omit as wholly immaterial to the questioned finding. If  
18   there is omitted from the record any portion of the proceed-  
19   ings before the agency, board, commission, or officer which  
20   the court subsequently determines to be proper for it  
21   to consider to enable it to review or enforce the order in  
22   question the court may direct that such additional portion  
23   of the proceedings be filed as a supplement to the record.  
24   The agency, board, commission, or officer concerned may,  
25   at its option and without regard to the foregoing provisions

1 of this subsection, and if so requested by the petitioner for  
2 review or respondent in enforcement shall, file in the court  
3 the entire record of the proceedings before it without  
4 abbreviation.

5 “(c) The agency, board, commission, or officer con-  
6 cerned may transmit to the court of appeals the original  
7 papers comprising the whole or any part of the record or  
8 any supplemental record, otherwise true copies of such papers  
9 certified by an authorized officer or deputy of the agency,  
10 board, commission, or officer concerned shall be transmitted.  
11 Any original papers thus transmitted to the court of appeals  
12 shall be returned to the agency, board, commission, or officer  
13 concerned upon the final determination of the review or  
14 enforcement proceeding. Pending such final determination  
15 any such papers may be returned by the court temporarily to  
16 the custody of the agency, board, commission, or officer con-  
17 cerned if needed for the transaction of the public business.  
18 Certified copies of any papers included in the record or any  
19 supplemental record may also be returned to the agency,  
20 board, commission, or officer concerned upon the final deter-  
21 mination of review or enforcement proceedings.

22 “(d) The provisions of this section are not applicable to  
23 proceedings to review decisions of the Tax Court of the  
24 United States or to proceedings to review or enforce those  
25 orders of administrative agencies, boards, commissions, or

1 officers which are by law reviewable or enforceable by the  
2 district courts.”

3 SEC. 3. (a) The sixth sentence of subsection (b) of  
4 section 5 of the Federal Trade Commission Act, as amended  
5 (52 Stat. 112), is amended to read as follows: “Until the  
6 expiration of the time allowed for filing a petition for review,  
7 if no such petition has been duly filed within such time, or, if  
8 a petition for review has been filed within such time then  
9 until the record in the proceeding has been filed in a court  
10 of appeals of the United States, as hereinafter provided, the  
11 Commission may at any time, upon such notice and in such  
12 manner as it shall deem proper, modify or set aside, in whole  
13 or in part, any report or any order made or issued by it  
14 under this section.”

15 (b) The second and third sentences of subsection (c)  
16 of section 5 of the Federal Trade Commission Act, as  
17 amended (52 Stat. 112–113), are amended to read as fol-  
18 lows: “A copy of such petition shall be forthwith trans-  
19 mitted by the clerk of the court to the Commission, and  
20 thereupon the Commission shall file in the court the record  
21 in the proceeding, as provided in section 2112 of title 28,  
22 United States Code. Upon such filing of the petition the  
23 court shall have jurisdiction of the proceeding and of the  
24 question determined therein concurrently with the Commis-  
25 sion until the filing of the record and shall have power to



1 make and enter a decree affirming, modifying, or setting  
2 aside the order of the Commission, and enforcing the same  
3 to the extent that such order is affirmed and to issue such  
4 writs as are ancillary to its jurisdiction or are necessary in  
5 its judgment to prevent injury to the public or to com-  
6 petitors pendente lite.”

7 (c) Subsection (d) of section 5 of the Federal Trade  
8 Commission Act, as amended (52 Stat. 113), is amended  
9 to read as follows:

10 “(d) Upon the filing of the record with it the jurisdic-  
11 tion of the court of appeals of the United States to affirm,  
12 enforce, modify, or set aside orders of the Commission shall  
13 be exclusive.”

14 SEC. 4. (a) The sixth sentence of the second paragraph  
15 of section 11 of the Act of October 15, 1914, as amended  
16 (64 Stat. 1127), is amended to read as follows: “Until the  
17 record in such hearing shall have been filed in a United  
18 States court of appeals, as hereinafter provided, the Commis-  
19 sion or Board may at any time, upon such notice, and in such  
20 manner as it shall deem proper, modify or set aside, in whole  
21 or in part, any report or any order made or issued by it  
22 under this section.”

23 (b) The first and second sentences of the third para-  
24 graph of section 11 of the Act of October 15, 1914, as  
25 amended (64 Stat. 1127), are amended to read as follows:

1 “If such person fails or neglects to obey such order of the  
2 Commission or Board while the same is in effect, the Com-  
3 mission or Board may apply to the United States court of  
4 appeals, within any circuit where the violation complained  
5 of was or is being committed or where such person resides  
6 or carries on business, for the enforcement of its order, and  
7 shall file the record in the proceeding, as provided in section  
8 2112 of title 28, United States Code. Upon such filing of  
9 the application the court shall cause notice thereof to be  
10 served upon such person, and thereupon shall have jurisdic-  
11 tion of the proceeding and of the question determined therein  
12 concurrently with the Commission or Board until the filing  
13 of the record, and shall have power to make and enter a  
14 decree affirming, modifying, or setting aside the order of  
15 the Commission or Board.”

16 (c) The second and third sentences of the fourth para-  
17 graph of section 11 of the Act of October 15, 1914, as  
18 amended (64 Stat. 1128), are amended to read as follows:  
19 “A copy of such petition shall be forthwith transmitted by  
20 the clerk of the court to the Commission or Board and  
21 thereupon the Commission or Board shall file in the court  
22 the record in the proceeding, as provided in section 2112  
23 of title 28, United States Code. Upon the filing of such  
24 petition the court shall have the same jurisdiction to affirm,

1 set aside, or modify the order of the Commission or Board  
2 as in the case of an application by the Commission or Board  
3 for the enforcement of its order, and the findings of the  
4 Commission or Board as to the facts, if supported by sub-  
5 stantial evidence, determined as provided in section 10 (e)  
6 of the Administrative Procedure Act, shall in like manner  
7 be conclusive.”

8 (d) The fifth paragraph of section 11 of the Act of  
9 October 15, 1914, as amended (64 Stat. 1128), is amended  
10 to read as follows:

11 “Upon the filing of the record with it the jurisdiction  
12 of the United States court of appeals to enforce, set aside,  
13 or modify orders of the Commission or Board shall be  
14 exclusive.”

15 SEC. 5. The fourth and fifth sentences of the first para-  
16 graph of section 2 of the Act of July 28, 1916 (39 Stat.  
17 425), are amended to read as follows: “A copy of such  
18 petition shall be forthwith transmitted by the clerk of the  
19 court to the Post Office Department and thereupon the said  
20 Department shall file in the court the record, as provided  
21 in section 2112 of title 28, United States Code. Upon the  
22 filing of such petition the court shall have jurisdiction to  
23 affirm, set aside or modify the order of the Department.”



1        SEC. 6. (a) Subsection (c) of section 203 of the  
2 Packers and Stockyards Act, 1921 (42 Stat. 162), is  
3 amended to read as follows:

4        “(c) Until the record in such hearing has been filed  
5 in a court of appeals of the United States, as provided in  
6 section 204, the Secretary at any time, upon such notice  
7 and in such manner as he deems proper, but only after  
8 reasonable opportunity to the packer to be heard, may  
9 amend or set aside the report or order, in whole or in part.”

10        (b) Subsections (b), (c), and (d) of section 204 of  
11 the Packers and Stockyards Act, 1921 (42 Stat. 162), are  
12 amended to read as follows:

13        “(b) The clerk of the court shall immediately cause  
14 a copy of the petition to be delivered to the Secretary, and  
15 the Secretary shall thereupon file in the court the record  
16 in such proceedings, as provided in section 2112 of title 28,  
17 United States Code. If before such record is filed the  
18 Secretary amends or sets aside his report or order, in whole  
19 or in part, the petitioner may amend the petition within such  
20 time as the court may determine, on notice to the Secretary.

21        “(c) At any time after such petition is filed, the court,  
22 on application of the Secretary, may issue a temporary  
23 injunction, restraining, to the extent it deems proper, the  
24 packer and his officers, directors, agents, and employees,

1 from violating any of the provisions of the order pending  
2 the final determination of the appeal.

3 “(d) The evidence so taken or admitted, and filed as  
4 aforesaid as a part of the record, shall be considered by the  
5 court as the evidence in the case. The proceedings in such  
6 cases in the court of appeals shall be made a preferred cause  
7 and shall be expedited in every way.”

8 (c) The first sentence of subsection (h) of section 204  
9 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is  
10 amended to read as follows:

11 “(h) The court of appeals shall have jurisdiction, which  
12 upon the filing of the record with it shall be exclusive, to re-  
13 view, and to affirm, set aside, or modify, such orders of the  
14 Secretary, and the decree of such court shall be final except  
15 that it shall be subject to review by the Supreme Court of the  
16 United States upon certiorari, as provided in section 1254 of  
17 title 28, if such writ is duly applied for within sixty days  
18 after entry of the decree.”

19 SEC. 7. (a) The third and fourth sentences of para-  
20 graph (a) of section 6 of the Commodity Exchange Act  
21 (42 Stat. 1001), are amended to read as follows: “The  
22 clerk of the court in which such a petition is filed shall  
23 immediately cause a copy thereof to be delivered to the  
24 Secretary of Agriculture, Chairman of said Commission, or

1 any member thereof, and the said Commission shall there-  
2 upon file in the court the record in such proceedings, as  
3 provided in section 2112 of title 28, United States Code.  
4 The testimony and evidence taken or submitted before the  
5 said Commission, duly filed as aforesaid as a part of the  
6 record, shall be considered by the court as the evidence in  
7 the case.”

8 (b) The seventh and eighth sentences of paragraph (b)  
9 of section 6 of the Commodity Exchange Act (42 Stat.  
10 1002), as amended, are amended to read as follows: “A  
11 copy of such petition shall be forthwith transmitted by the  
12 clerk of the court to the Secretary of Agriculture and there-  
13 upon the Secretary of Agriculture shall file in the court the  
14 record theretofore made, as provided in section 2112 of title  
15 28, United States Code. Upon the filing of the petition the  
16 court shall have jurisdiction to affirm, to set aside, or modify  
17 the order of the Secretary of Agriculture, and the findings of  
18 the Secretary of Agriculture as to the facts, if supported by  
19 the weight of evidence, shall in like manner be conclusive.”

20 SEC. 8. The third and fourth sentences of the second  
21 paragraph of subsection (b) of section 641 of the Tariff Act  
22 of 1930, as amended (49 Stat. 865), are amended to read  
23 as follows: “A copy of such petition shall be forthwith  
24 transmitted by the clerk of the court to the Secretary of the  
25 Treasury, or any officer designated by him for that purpose,



1 and thereupon the Secretary of the Treasury shall file in the  
2 court the record upon which the order complained of was  
3 entered, as provided in section 2112 of title 28, United  
4 States Code. Upon the filing of such petition such court  
5 shall have exclusive jurisdiction to affirm, modify, or set  
6 aside such order, in whole or in part.”

7 SEC. 9. The second sentence of subsection (a) of section  
8 9 of the Securities Act of 1933 (48 Stat. 80) is amended  
9 to read as follows: “A copy of such petition shall be forth-  
10 with transmitted by the clerk of the court to the Commission,  
11 and thereupon the Commission shall file in the court the  
12 record upon which the order complained of was entered, as  
13 provided in section 2112 of title 28, United States Code.”

14 SEC. 10. The second and third sentences of subsection  
15 (a) of section 25 of the Securities Exchange Act of 1934  
16 (48 Stat. 901) are amended to read as follows: “A copy  
17 of such petition shall be forthwith transmitted by the clerk  
18 of the court to any member of the Commission, and there-  
19 upon the Commission shall file in the court the record upon  
20 which the order complained of was entered, as provided in  
21 section 2112 of title 28, United States Code. Upon the  
22 filing of such petition such court shall have jurisdiction,  
23 which upon the filing of the record shall be exclusive, to  
24 affirm, modify, and enforce or set aside such order, in whole  
25 or in part.”

1        SEC. 11. The third sentence of subsection (c) of sec-  
2        tion 18 of the Act of June 18, 1934 (48 Stat. 1002), is  
3        amended to read as follows: "The clerk of the court in which  
4        such a petition is filed shall immediately cause a copy thereof  
5        to be delivered to the Board and it shall thereupon file in the  
6        court the record in the proceedings held before it under  
7        this section, as provided in section 2112 of title 28, United  
8        States Code."

9        SEC. 12. The second sentence of subsection (d) of sec-  
10        tion 402 of the Communications Act of 1934, as amended  
11        (66 Stat. 719), is amended to read as follows: "Within  
12        thirty days after the filing of an appeal, the Commission  
13        shall file with the court the record upon which the order  
14        complained of was entered, as provided in section 2112 of  
15        title 28, United States Code."

16        SEC. 13. (a) Subsection (d) of section 10 of the Na-  
17        tional Labor Relations Act, as amended (61 Stat. 147),  
18        is amended to read as follows:

19        "(d) Until the record in a case shall have been filed in  
20        a court, as hereinafter provided, the Board may at any time  
21        upon reasonable notice and in such manner as it shall deem  
22        proper, modify or set aside, in whole or in part, any finding  
23        or order made or issued by it."

24        (b) The first, second, fifth and seventh sentences of  
25        subsection (e) of section 10 of the National Labor Relations

1 Act, as amended (61 Stat. 147), are amended to read as  
2 follows:

3 “(e) The Board shall have power to petition any court  
4 of appeals of the United States, or if all the courts of appeals  
5 to which application may be made are in vacation, any dis-  
6 trict court of the United States, within any circuit or dis-  
7 trict, respectively, wherein the unfair labor practice in ques-  
8 tion occurred or wherein such person resides or transacts  
9 business, for the enforcement of such order and for appro-  
10 priate temporary relief or restraining order, and shall file in  
11 the court the record in the proceedings, as provided in  
12 section 2112 of title 28, United States Code. Upon the  
13 filing of such petition, the court shall cause notice thereof  
14 to be served upon such person, and thereupon shall have  
15 jurisdiction of the proceeding and of the question determined  
16 therein, and shall have power to grant such temporary relief  
17 or restraining order as it deems just and proper, and to make  
18 and enter a decree enforcing, modifying, and enforcing as  
19 so modified, or setting aside in whole or in part the order  
20 of the Board. \* \* \* If either party shall apply to the  
21 court for leave to adduce additional evidence and shall show  
22 to the satisfaction of the court that such additional evidence  
23 is material and that there were reasonable grounds for the  
24 failure to adduce such evidence in the hearing before the  
25 Board, its member, agent, or agency, the court may



1 order such additional evidence to be taken before the Board,  
2 its member, agent, or agency, and to be made a part  
3 of the record. \* \* \* Upon the filing of the record with it the  
4 jurisdiction of the court shall be exclusive and its judgment  
5 and decree shall be final, except that the same shall be  
6 subject to review by the appropriate United States court  
7 of appeals if application was made to the district court as  
8 hereinabove provided, and by the Supreme Court of the  
9 United States upon writ of certiorari or certification as pro-  
10 vided in section 1254 of title 28."

11 (c) The second and third sentences of subsection (f) of  
12 section 10 of the National Labor Relations Act, as amended  
13 (61 Stat. 148), are amended to read as follows: "A copy of  
14 such petition shall be forthwith transmitted by the clerk of  
15 the court to the Board, and thereupon the aggrieved party  
16 shall file in the court the record in the proceeding, certified  
17 by the Board, as provided in section 2112 of title 28, United  
18 States Code. Upon the filing of such petition, the court shall  
19 proceed in the same manner as in the case of an application  
20 by the Board under subsection (e) of this section, and shall  
21 have the same jurisdiction to grant to the Board such tem-  
22 porary relief or restraining order as it deems just and proper,  
23 and in like manner to make and enter a decree enforcing,  
24 modifying, and enforcing as so modified, or setting aside in  
25 whole or in part the order of the Board; the findings of the

1 Board with respect to questions of fact if supported by sub-  
2 stantial evidence on the record considered as a whole shall in  
3 like manner be conclusive.”

4 SEC. 14. The third and fourth sentences of subsection  
5 (h) of section 4 of the Federal Alcohol Administration Act  
6 (49 Stat. 980), as amended, are amended to read as follows:  
7 “A copy of such petition shall be forthwith transmitted by  
8 the clerk of the court to the Secretary, or any officer desig-  
9 nated by him for that purpose, and thereupon the Secretary  
10 shall file in the court the record upon which the order com-  
11 plained of was entered, as provided in section 2112 of title  
12 28, United States Code. Upon the filing of such petition  
13 such court shall have exclusive jurisdiction to affirm, modify,  
14 or set aside such order, in whole or in part.”

15 SEC. 15. The second and third sentences of subsection  
16 (a) of section 24 of the Public Utility Holding Company  
17 Act of 1935 (49 Stat. 834), are amended to read as follows:  
18 “A copy of such petition shall be forthwith transmitted by  
19 the clerk of the court to any member of the Commission,  
20 or any officer thereof designated by the Commission for that  
21 purpose, and thereupon the Commission shall file in the  
22 court the record upon which the order complained of was  
23 entered, as provided in section 2112 of title 28, United  
24 States Code. Upon the filing of such petition such court

1 shall have jurisdiction, which upon the filing of the record  
2 shall be exclusive, to affirm, modify, or set aside such order,  
3 in whole or in part.”

4 SEC. 16. (a) Subsection (a) of section 313 of the  
5 Federal Power Act, as amended (49 Stat. 860), is amended  
6 by inserting at the end thereof an additional sentence read-  
7 ing as follows: “Until the record in a proceeding shall have  
8 been filed in a court of appeals, as provided in subsection  
9 (b), the Commission may at any time, upon reasonable  
10 notice and in such manner as it shall deem proper, modify  
11 or set aside, in whole or in part, any finding or order made or  
12 issued by it under the provisions of this Act.”

13 (b) The second and third sentences of subsection (b)  
14 of section 313 of the Federal Power Act, as amended (49  
15 Stat. 860), are amended to read as follows: “A copy of such  
16 petition shall forthwith be transmitted by the clerk of the  
17 court to any member of the Commission and thereupon the  
18 Commission shall file with the court the record upon which  
19 the order complained of was entered, as provided in section  
20 2112 of title 28, United States Code. Upon the filing of  
21 such petition such court shall have jurisdiction, which upon  
22 the filing of the record with it shall be exclusive, to affirm,  
23 modify, or set aside such order in whole or in part.”

24 SEC. 17. The second and third sentences of subsection  
25 (b) of section 611 of the Merchant Marine Act, 1936, as



1 amended (52 Stat. 961), are amended to read as follows:

2 "A copy of such petition shall be forthwith transmitted by  
3 the clerk of the court to any member of the Commission,  
4 or any officer thereof designated by the Commission for that  
5 purpose, and thereupon the Commission shall file in the court  
6 the record upon which the order complained of was entered,  
7 as provided in section 2112 of title 28, United States Code.  
8 Upon the filing of such petition such court shall have exclu-  
9 sive jurisdiction to determine whether such cancellation or  
10 default was without just cause, and to affirm or set aside  
11 such order."

12 SEC. 18. Subsection (c) of section 1006 of the Civil  
13 Aeronautics Act of 1938 (52 Stat. 1024), is amended  
14 to read as follows:

15 "(c) A copy of the petition shall, upon filing, be forth-  
16 with transmitted to the Board by the clerk of the court;  
17 and the Board shall thereupon file in the court the record,  
18 if any, upon which the order complained of was entered, as  
19 provided in section 2112 of title 28, United States Code."

20 SEC. 19. (a) Subsection (a) of section 19 of the  
21 Natural Gas Act (52 Stat. 831), is amended by inserting  
22 at the end thereof an additional sentence reading as follows:  
23 "Until the record in a proceeding shall have been filed in  
24 a court of appeals, as provided in subsection (b), the Com-  
25 mission may at any time, upon reasonable notice and in

1 such manner as it shall deem proper, modify or set aside,  
2 in whole or in part, any finding or order made or issued  
3 by it under the provisions of this Act.”

4 (b) The second and third sentences of subsection (b).  
5 of section 19 of the Natural Gas Act (52 Stat. 831), are  
6 amended to read as follows: “A copy of such petition shall  
7 forthwith be transmitted by the clerk of the court to any  
8 member of the Commission and thereupon the Commission  
9 shall file with the court the record upon which the order  
10 complained of was entered, as provided in section 2112 of  
11 title 28, United States Code. Upon the filing of such peti-  
12 tion such court shall have jurisdiction, which upon the filing  
13 of the record with it shall be exclusive, to affirm, modify,  
14 or set aside such order in whole or in part.”

15 SEC. 20. (a) The first and second sentences of para-  
16 graph (2) of subsection (i) of section 408 of the Federal  
17 Food, Drug, and Cosmetic Act, as added by the Act of  
18 July 22, 1954 (ch. 559, 68 Stat. 515), are amended to  
19 read as follows:

20 “(2) In the case of a petition with respect to an  
21 order under subsection (d) (5) or (e), a copy of the  
22 petition shall be forthwith transmitted by the clerk of the  
23 court to the Secretary, or any officer designated by him  
24 for that purpose, and thereupon the Secretary shall file in  
25 the court the record of the proceedings on which he based

1 his order, as provided in section 2112 of title 28, United  
2 States Code. Upon the filing of such petition, the court shall  
3 have exclusive jurisdiction to affirm or set aside the order  
4 complained of in whole or in part.”

5 (b) The first and second sentences of paragraph (3)  
6 of subsection (i) of section 408 of the Federal Food, Drug,  
7 and Cosmetic Act, as added by the Act of July 22, 1954  
8 (ch. 559, 68 Stat. 515), are amended to read as follows:

9 “(3) In the case of a petition with respect to an order  
10 under subsection (1), a copy of the petition shall be forth-  
11 with transmitted by the clerk of the court to the Secretary  
12 of Agriculture, or any officer designated by him for that  
13 purpose, and thereupon the Secretary shall file in the court  
14 the record of the proceedings on which he based his order,  
15 as provided in section 2112 of title 28, United States Code.  
16 Upon the filing of such petition, the court shall have ex-  
17 clusive jurisdiction to affirm or set aside the order com-  
18 plained of in whole or in part.”

19 SEC. 21. (a) The second and third sentences of para-  
20 graph (1) of subsection (f) of section 701 of the Federal  
21 Food, Drug, and Cosmetic Act (52 Stat. 1055), as  
22 amended, are amended to read as follows: “A copy of  
23 the petition shall be forthwith transmitted by the clerk of  
24 the court to the Secretary or other officer designated by him  
25 for that purpose. The Secretary thereupon shall file in the



1 court the record of the proceedings on which the Secretary  
2 based his order, as provided in section 2112 of title 28,  
3 United States Code.”

4 (b) The first sentence of paragraph (3) of subsection  
5 (f) of section 701 of the Federal Food, Drug, and Cosmetic  
6 Act (52 Stat. 1055), as amended, is amended to read as  
7 follows: “Upon the filing of the petition referred to in para-  
8 graph (1) of this subsection, the court shall have jurisdiction  
9 to affirm the order, or to set it aside in whole or in part,  
10 temporarily or permanently.”

11 SEC. 22. The second and third sentences of subsection  
12 (a) of section 10 of the Fair Labor Standards Act of 1938  
13 (52 Stat. 1065), as amended, are amended to read as fol-  
14 lows: “A copy of such petition shall forthwith be transmit-  
15 ted by the clerk of the court to the Secretary, and thereupon  
16 the Secretary shall file in the court the record of the indus-  
17 try committee upon which the order complained of was en-  
18 tered, as provided in section 2112 of title 28, United States  
19 Code. Upon the filing of such petition such court shall  
20 have exclusive jurisdiction to affirm, modify, or set aside  
21 such order in whole or in part, so far as it is applicable to  
22 the petitioner.”

23 SEC. 23. The fourth, fifth, sixth, and eighth sentences of  
24 subsection (f) of section 5 of the Railroad Unemployment  
25 Insurance Act, as amended (52 Stat. 1100), are amended

1 to read as follows: "Within fifteen days after receipt of  
2 service, or within such additional time as the court may al-  
3 low, the Board shall file with the court in which such peti-  
4 tion has been filed the record upon which the findings and  
5 decision complained of are based, as provided in section 2112  
6 of title 28, United States Code. Upon the filing of such  
7 petition the court shall have exclusive jurisdiction of the  
8 proceeding and of the question determined therein, and shall  
9 give precedence in the adjudication thereof over all other  
10 civil cases not otherwise entitled by law to precedence. It  
11 shall have power to enter a decree affirming, modifying, or  
12 reversing the decision of the Board, with or without remand-  
13 ing the cause for rehearing. \* \* \* No additional evidence  
14 shall be received by the court, but the court may order  
15 additional evidence to be taken before the Board, and the  
16 Board may, after hearing such additional evidence, modify  
17 its findings of fact and conclusions and file such additional or  
18 modified findings and conclusions with the court, and the  
19 Board shall file with the court the additional record."

20 SEC. 24. (a) Subsection (c) of section 409 of the Fed-  
21 eral Seed Act (53 Stat. 1287), is amended to read as  
22 follows:

23 "(c) Until the record in such hearing has been filed in  
24 a court of appeals as provided in section 410, the Secretary  
25 of Agriculture at any time, upon such notice and in such

1 manner as he deems proper, but only after reasonable oppor-  
2 tunity to the person to be heard, may amend or set aside the  
3 report or order, in whole or in part."

4 (b) The second, third and fourth paragraphs of section  
5 410 of the Federal Seed Act (53 Stat. 1288), are amended  
6 to read as follows:

7 "The clerk of the court shall immediately cause a copy  
8 of the petition to be delivered to the Secretary, and the Sec-  
9 retary shall thereupon file in the court the record in such  
10 proceedings, as provided in section 2112 of title 28, United  
11 States Code. If before such record is filed, the Secretary  
12 amends or sets aside his report or order, in whole or in part,  
13 the petitioner may amend the petition within such time as  
14 the court may determine, on notice to the Secretary.

15 "At any time after such petition is filed the court, on  
16 application of the Secretary, may issue a temporary injunc-  
17 tion restraining, to the extent it deems proper, the person  
18 and his officers, directors, agents, and employees from vio-  
19 lating any of the provisions of the order pending the final  
20 determination of the appeal.

21 "The evidence so taken or admitted and filed as afore-  
22 said as a part of the record, shall be considered by the court  
23 as the evidence in the case. The proceedings in such cases  
24 in the court of appeals shall be made a preferred cause and  
25 shall be expedited in every way."



1       (c) The first and second sentences of section 411 of  
2 the Federal Seed Act (53 Stat. 1288), are amended to  
3 read as follows:

4       “SEC. 411. If any person against whom an order is  
5 issued under section 409 fails to obey the order, the Secretary  
6 of Agriculture, or the United States, by its Attorney General,  
7 may apply to the court of appeals of the United States,  
8 within the circuit where the person against whom the order  
9 was issued resides or has his principal place of business, for  
10 the enforcement of the order, and shall file the record in such  
11 proceedings, as provided in section 2112 of title 28, United  
12 States Code. Upon such filing of the application the court  
13 shall cause notice thereof to be served upon the person  
14 against whom the order was issued.”

15       SEC. 25. The second and third sentences of subsection  
16 (a) of section 43 of the Investment Company Act of 1940,  
17 as amended (54 Stat. 844), are amended to read as follows:  
18 “A copy of such petition shall be forthwith transmitted by  
19 the clerk of the court to any member of the Commission  
20 or any officer thereof designated by the Commission for  
21 that purpose, and thereupon the Commission shall file in the  
22 court the record upon which the order complained of was  
23 entered, as provided in section 2112 of title 28, United  
24 States Code. Upon the filing of such petition such court  
25 shall have jurisdiction, which upon the filing of the record

1 shall be exclusive, to affirm, modify, or set aside such order,  
2 in whole or in part.”

3 SEC. 26. The second and third sentences of subsection  
4 (a) of section 213 of the Investment Advisers Act of 1940,  
5 as amended (54 Stat. 855), are amended to read as follows:  
6 “A copy of such petition shall be forthwith transmitted by  
7 the clerk of the court to any member of the Commission, or  
8 any officer thereof designated by the Commission for that  
9 purpose, and thereupon the Commission shall file in the court  
10 the record upon which the order complained of was entered,  
11 as provided in section 2112 of title 28, United States Code.  
12 Upon the filing of such petition such court shall have juris-  
13 diction, which upon the filing of the record shall be ex-  
14 clusive, to affirm, modify, or set aside such order, in whole  
15 or in part.”

16 SEC. 27. (a) Paragraph (1) of subsection (b) of  
17 section 632 of the Act of July 1, 1944, as added by the  
18 Hospital Survey and Construction Act (60 Stat. 1048),  
19 is amended to read as follows:

20 “(b) (1) If the Surgeon General refuses to approve  
21 any application under section 625 or section 654, the State  
22 agency through which the application was submitted, or if  
23 any State is dissatisfied with the Surgeon General’s action  
24 under subsection (a) of this section, such State may appeal  
25 to the United States court of appeals for the circuit in which

1 such State is located by filing with such court a notice of  
2 appeal. The jurisdiction of the court shall attach upon the  
3 filing of such notice. A copy of the notice of appeal shall be  
4 forthwith transmitted by the clerk of the court to the Sur-  
5 geon General, or any officer designated by him for that pur-  
6 pose. The Surgeon General shall thereupon file in the  
7 court the record of the proceedings on which he based his  
8 action, as provided in section 2112 of title 28, United States  
9 Code.”

10 (b) The first sentence of paragraph (2) of subsection  
11 (b) of section 632 of the Act of July 1, 1944, as added by  
12 the Hospital Survey and Construction Act (60 Stat. 1048),  
13 is amended to read as follows:

14 “(2) The findings of fact by the Surgeon General, un-  
15 less substantially contrary to the weight of the evidence, shall  
16 be conclusive; but the court, for good cause shown, may re-  
17 mand the case to the Surgeon General to take further evi-  
18 dence, and the Surgeon General may thereupon make new or  
19 modified findings of fact and may modify his previous action,  
20 and shall file in the court the record of the further pro-  
21 ceedings.”

22 SEC. 28. The fourth sentence of subsection (c) of sec-  
23 tion 205 of the Sugar Act of 1948 (61 Stat. 927), is  
24 amended to read as follows: “Within thirty days after the  
25 filing of said appeal the Secretary shall file with the court



1 the record upon which the decision complained of was  
2 entered, as provided in section 2112 of title 28, United  
3 States Code, and a list of all interested persons to whom  
4 he has mailed or otherwise delivered a copy of said notice  
5 of appeal.”.

6 SEC. 29. The second and third sentences of subsection  
7 (a) of section 14 of the Internal Security Act of 1950 (64  
8 Stat. 1001), are amended to read as follows: “A copy of  
9 such petition shall be forthwith transmitted by the clerk of  
10 the court to the Board, and thereupon the Board shall file  
11 in the court the record in the proceeding, as provided in  
12 section 2112 of title 28, United States Code. Upon the  
13 filing of such petition the court shall have jurisdiction of the  
14 proceeding and shall have power to affirm or set aside the  
15 order of the Board; but the court may in its discretion and  
16 upon its own motion transfer any action so commenced to  
17 the United States Court of Appeals for the circuit wherein  
18 the petitioner resides.”.

19 SEC. 30. (a) Subsection (e) of section 110 of the  
20 Internal Security Act of 1950 (64 Stat. 1028), is amended  
21 to read as follows:

22 “(e) Until the record in a case shall have been filed  
23 in a court, as hereinafter provided, the Board may at any  
24 time, upon reasonable notice and in such manner as it

1 shall deem proper, modify or set aside, in whole or in  
2 part, any finding or order made or issued by it.”

3 (b) The third and fifth sentences of subsection (c) of  
4 section 111 of the Internal Security Act of 1950 (64 Stat.  
5 1028), are amended to read as follows: “The Board shall  
6 thereupon file in the court the record of the proceedings  
7 before the Board with respect to the matter concerning which  
8 judicial review is sought, as provided in section 2112 of  
9 title 28, United States Code. \* \* \* Upon the filing of such  
10 petition the court shall have jurisdiction of the proceeding,  
11 which upon the filing of the record with it shall be exclusive,  
12 and shall have power to affirm, modify, or set aside, or to  
13 enforce or enforce as modified the order of the Board.”

14 (c) The first sentence of subsection (d) of section 111  
15 of the Internal Security Act of 1950 (60 Stat. 1029), is  
16 amended to read as follows:

17 “(d) If either party shall apply to the court for leave  
18 to adduce additional evidence and shall show to the satis-  
19 faction of the court that such additional evidence is material  
20 and that there were reasonable grounds for the failure to  
21 adduce such evidence in the hearing before the Board or  
22 its hearing examiner, the court may order such additional  
23 evidence to be taken before the Board or its hearing examiner  
24 and to be made a part of the record.”

1        SEC. 31. (a) Section 6 of the Act of December 29,  
2    1950 (64 Stat. 1130), is amended to read as follows:

3        "SEC. 6. Unless the proceeding has been terminated  
4    on a motion to dismiss the petition, the agency shall file in  
5    the office of the clerk of the court of appeals in which the  
6    proceeding is pending the record on review, as provided in  
7    section 2112 of title 28, United States Code."

8        (b) The second sentence of subsection (c) of section 7  
9    of the Act of December 29, 1950 (64 Stat. 1131), is  
10   amended to read as follows: "The agency may modify its  
11   findings of fact, or make new findings, by reason of the  
12   additional evidence so taken and may modify or set aside  
13   its order and shall file in the court such additional evidence,  
14   such modified findings or new findings, and such modified  
15   order or the order setting aside the original order."

16       SEC. 32. Subsection (b) of section 207 of the Act of  
17   September 23, 1950, as amended (64 Stat. 974), is  
18   amended by adding at the end of that subsection three  
19   additional sentences reading as follows: "The local educa-  
20   tional agency affected may file with the court a petition  
21   to review such action. A copy of the petition shall be  
22   forthwith transmitted by the clerk of the court to the Com-  
23   missioner, or any officer designated by him for that purpose.  
24   Upon the filing of the petition the court shall have juris-



1 diction to affirm or set aside the action of the Commissioner  
2 in whole or in part.”

3 SEC. 33. The fifth and sixth sentences of subsection  
4 (b) of section 207 of the International Claims Settlement  
5 Act of 1949, as amended (69 Stat. 564), are amended to  
6 read as follows: “Such petition for review must be filed  
7 within sixty days after the date of mailing of the final order  
8 of denial by said designee and a copy shall forthwith be  
9 transmitted to the said designee by the clerk of the court.  
10 Within forty-five days after receipt of such petition for  
11 review, or within such further time as the court may grant for  
12 good cause shown, said designee shall file an answer thereto,  
13 and shall file with the court the record of the proceedings  
14 with respect to such claim, as provided in section 2112 of  
15 title 28, United States Code.”

16 SEC. 34. The second and third sentences of section 9  
17 of the Bank Holding Company Act of 1956 (70 Stat. 138)  
18 are amended to read as follows: “A copy of such petition  
19 shall be forthwith transmitted to the Board by the clerk  
20 of the court, and thereupon the Board shall file in the court  
21 the record made before the Board, as provided in section  
22 2112 of title 28, United States Code. Upon the filing of  
23 such petition the court shall have jurisdiction to affirm, set  
24 aside, or modify the order of the Board and to require the

1 Board to take such action with regard to the matter under  
 2 review as the court deems proper."

3 SEC. 35. This Act shall not be construed to repeal or  
 4 modify any provision of the Administrative Procedure Act.

Passed the House of Representatives August 5, 1957.

Attest:

RALPH R. ROBERTS,

*Clerk.*









[Report No. 2129]

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## AN ACT

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To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

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AUGUST 6 (legislative day, JULY 8), 1957

Read twice and referred to the Committee on the  
Judiciary

AUGUST 4, 1958

Reported without amendment







Aug. 14, 1958

SENATE

11. SUPPLEMENTAL APPROPRIATION BILL, 1959. Began debate on this bill, H. R. 13450 (pp. 16141, 16142, 16154, 16173, 16229-51, 16259). Rejected an amendment by Sen. Sparkman, 31 to 47, which would have appropriated \$75,000 for farm housing research by land-grant colleges (pp. 16233-38).  
Attached is a table reflecting the actions of the Appropriations Committee in reporting the bill, and excerpts from the Committee report, as they affect this Department. The Committee also made various other changes including the following:  
Increased from \$2,750,000 to \$2,850,000 the item for administration of the Ryukyu Islands, under the Army Department, with an authorization for the President to transfer any of this work to other departments. Added an item of \$5,100,000 for purchase of foreign currencies (pursuant to Public Law 480) for disseminating scientific and technological information and supporting scientific activities overseas (at the discretion of the President), to remain available until expended. Added an item of \$2,915,000 for Office of Defense and Civilian Mobilization.
12. ADMINISTRATIVE ORDERS. Passed without amendment H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the laws relating thereto. This bill will now be sent to the President. p. 16175
13. FARM LABOR. Passed without amendment S. 4232, to extend the Mexican farm labor program for 1 year, to June 30, 1960. p. 16176
14. PURCHASING. Passed with amendments S. 3224, to assist small business firms to obtain a fair share of Government purchases and contracts and to expedite Government procurement. pp. 16176-7
15. VIRGIN ISLANDS. Passed as reported H. R. 12226, to extend until June 30, 1969, the charter of the Virgin Islands Corporation, including new authority to operate salt water distillation facilities and continuation of authority for sugar production. p. 16183
16. HUMANE SLAUGHTER. Sen. Purtell inserted the letter he and Sens. Humphrey and Neuberger sent to the President urging him to sign the humane slaughter bill. p. 16202  
Sen. Humphrey commended Christian P. Norgord, former Washington representative of the American Humane Ass'n, for his work on behalf of humane slaughter legislation. p. 16258
17. RESEARCH. The Labor and Public Welfare Committee reported with amendment S. 3268, to provide various amendments to the National Science Foundation Act (S. Rept. 2367). p. 16127
18. SOCIAL SECURITY. The Finance Committee reported with amendment H. R. 13549, to increase the annuities under the Social Security Act (S. Rept. 2388). p. 16127
19. ELECTRIFICATION. The Public Works Committee reported without amendment S. 3571, to provide for equal treatment of all State-owned hydroelectric power projects with respect to the taking over of such projects by the U. S. (S. Rept. 2377). p. 16127  
Sen. Murray urged additional funds for construction of the Yellowtail Dam of the Missouri River Basin to provide additional electric power. pp. 16169-70



20. FORESTRY. Agreed to the conference report on S. 3051, to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing alternatives for private or Federal acquisition of the part of the tribal forest that must be sold. This bill will now be sent to the President. pp. 16203-07  
Sen. Morse inserted correspondence with the Small Business Administration and lumber organizations discussing a small business set-aside program for timber. pp. 16252-54
21. PERSONNEL. Passed without amendment H. R. 1168, to restore the pay of officers or employees to the grade level held before downgrading in certain cases. This bill will now be sent to the President. p. 16188  
The Joint Committee on Reduction of Nonessential Federal Expenditures submitted a report on Federal employment and pay for June 1958. pp. 16128-31
22. RECLAMATION. In compliance with the resolution passed by both Houses the President returned enrolled bill S. 4002, to authorize the Gray Reef Dam and Reservoir of the Glendo unit, Missouri River Basin project. p. 16124
23. NOMINATIONS. The Post Office and Civil Service Committee ordered reported the nomination of Barbara Bates Gunderson to be a Civil Service Commissioner. p. D851  
Confirmed the nomination of Bertha S. Adkins to be Under Secretary of the Department of Health, Education, and Welfare. p. 16126
24. WATER RESOURCES. Sen. Johnson stated that Texas needed a comprehensive plan for development of its water resources and announced that he planned to call up his bill S. 4266, to provide for a Federal study commission of Texas river basins, at an early date. pp. 16166, 16170
25. MILITARY CONSTRUCTION. Passed with amendments H. R. 13489, the military construction appropriation bill for 1959. Senate conferees were appointed. House conferees have not been appointed. pp. 16170, 16171-3
26. LEGISLATIVE PROGRAM. Sen. Johnson announced that he expected the Senate would consider the social security bill today, Aug. 15. p. 16170

#### ITEMS IN APPENDIX

27. FARM PROGRAM. Extension of remarks of Rep. Gubser citing the British decision to establish commercial import quotas instead of relying on aid shipments for fruits as an example of the results achieved by Secretary Benson's use of market development instead of subsidization. p. A7279  
Rep. Whitener inserted an editorial urging passage of farm legislation to allow higher acreage allotments for cotton and rice farmers. p. A7301  
Sen. Langer inserted a Farmers' Union-GTA broadcast opposing passage of any farm legislation lowering price supports. pp. A7317-18  
Sen. Yarborough inserted an article urging passage of the farm bill to maintain cotton acreage allotments. p. A7325
28. SURPLUS FOOD. Sen. Bridges inserted an editorial opposing shipment of food abroad and urging that surpluses be stored in the U. S. for civil defense purposes. p. A7260
29. MEXICAN FARM LABOR. Rep. Hosmer inserted an article commending the operation of the Mexican Farm Labor program in reducing the number of illegal transients across the U. S.-Mexico border. pp. A7334-5



in a bona fide effort to fairly ascertain just compensation to protect equally the rights of the taxpayer and the property owner.

The value of property especially designed and constructed by agreement for Government use is not ordinarily determined by transactions between willing buyers and willing sellers in the market place. In such instances normal appraisals, based on the price a prudent buyer would pay, cannot be used and it is the duty of the Department of Justice to examine Government procurement transactions to ascertain fairly just compensation predicated on the sum a prudent seller would or has required for similar property. The Government cannot fairly employ condemnation procedures to obtain a confiscatory or even a bargain acquisition. It is obviously unfair to pay a vendor who is a willing seller more than a condemnation defendant for similar property at the same time.

When property, designed and constructed by agreement for Government use, is condemned, the cost to the Government of similar property openly and competitively procured at the time of taking would be a fair measure of just compensation. It is considered that the element of value to the Government of the property acquired in condemnation should be admissible in all cases pertaining to property designed and constructed by agreement for Government use.

Excepting the power of conscription, there is no greater sovereign power than that of eminent domain. Great power arbitrarily exercised is tyranny. The Congress, the courts, and the executive branch must increasingly guard against abuse of governmental power.

#### ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES

The bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies, was announced as next in order.

Mr. HRUSKA. Mr. President, may we have an explanation of the bill?

Mr. EASTLAND. Mr. President, this bill authorizes the several courts of appeals of the United States to adopt rules authorizing the abbreviation of the transcript and other parts of the record made before Federal administrative agencies when the orders of those agencies are to be reviewed by the courts of appeals. Under several existing statutes permitting appeals to the court of appeals from the findings and orders of administrative agencies, it is necessary for the administrative agency to prepare and file the entire record of the proceedings before the administrative agency. This oftentimes results in a voluminous record, much of it not pertinent to the matters under review. Many times, likewise, the record involves other applicants not a party to the appeal.

Under the authority conferred by this bill, the courts of appeals could, by special order or by stipulation of the parties, provide for the filing of only those materials which are relevant to the issues before the court. In such matters the courts of appeals must, of necessity, have some latitude, and this legislation affords them that latitude.

The bill also provides that when petitions are filed in different circuits to review the same agency order, the jurisdiction of all the petitions shall rest with the court of appeals in which the

first petition is filed but that court will have authority to transfer such cases to another court of appeals if it appears that the convenience of the parties and the interests of justice would be served. Under existing law the agency, by selecting the court in which it files the record, determines which court shall have jurisdiction.

Information submitted to the committee indicated that the adoption of this legislation would result in the saving of time on the part of the court of appeals. Since it is now incumbent upon the Federal agencies to prepare the record for filing in the courts of appeals, it is also likely that this legislation would result in a saving of time and expense on the part of the Federal administrative agencies.

For these reasons, the committee has recommended that the legislation be favorably considered.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

#### AMENDMENT OF MERCHANT MARINE ACT OF 1920—BILL PASSED OVER

The bill (H. R. 9833) to amend section 27 of the Merchant Marine Act of 1920 was announced as next in order.

Mr. TALMADGE. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

#### SALES AND EXCHANGES OF PUBLIC LANDS OF THE TERRITORY OF HAWAII

The Senate proceeded to consider the bill (H. R. 9500) to permit certain sales and exchanges of public lands of the Territory of Hawaii to certain persons who suffered a substantial loss by reason of the tidal wave of March 9, 1957.

Mr. MORSE. Mr. President, I appreciate the courtesy of the Senator from Washington [Mr. JACKSON] in supplying a thorough analysis of the legal relationship with respect to the lands covered by the bill H. R. 9500. It is clear, under the public law relative to land titles in Hawaii, that the Federal Government holds bare legal title to the lands covered by H. R. 9500. The Territory of Hawaii owns the beneficial interest in these lands. Under the existing law the bare legal title held by the United States has no money value. Consequently, no valuation of the Morse formula is involved. I agree with the statement contained in the memorandum of the Senator from Washington that the insertion of a comma after the word "auction" on page 1, line 8 would clarify the meaning of the bill. I have prepared such an amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The LEGISLATIVE CLERK. On page 1, line 8, after the word "auction" it is proposed to insert a comma.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. MORSE. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement prepared by the Senator from Washington [Mr. JACKSON] on the bill.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON H. R. 9500 BY SENATOR JACKSON

H. R. 9500 would allow the Commissioner of Public Lands of the Territory, with the approval of the Governor and not less than two-thirds of the members of the Board of Public Lands to sell public lands, at fair market value to persons who have suffered a substantial loss of real property by reason of the tidal wave of March 9, 1957.

Also, the Commissioner could exchange public lands for such damaged lands, after procuring the same approval, and the lands to be transferred must equal the value of the damaged lands just prior to the tidal wave and without considering the value of improvements.

It is my understanding that an objection has been raised to this bill, because it may perpetrate a violation of the Morse formula. So far as the power to sell is concerned, I understand that the Morse formula is satisfied, but that the addition of a comma after the word auction would clarify the meaning that such public lands can be sold without the necessity of an auction, but must be sold at fair market value. I would interpose no objection to the addition of such a comma.

The situation is somewhat different than the land exchange provisions, but I do not feel that the bill violates the purpose and intent of the Morse formula. It is certainly not the intention of the committee to perpetrate such a violation, nor to set a precedent for violations in the future.

The status of public lands in Hawaii is different from such status elsewhere in the Nation. The basic statute governing the status of such lands in the act of July 7, 1898 (30 Stat. 750; 48 U. S. C. sec. 661) which reads as follows:

"Sec. 661. Public lands; management and disposition

"The laws of the United States existing on July 7, 1898, relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes (July 7, 1898, No. 55 sec. 1, 30 Stat. 750)" (Resolution of Annexation).

The following sections of the United States Code set forth the various rules relating to leases, sales, exchanges, and use of the public lands. Section 73 of the Hawaii Organic Act (31 Stat. 154; 48 U. S. C. sec. 664) as amended, states "the laws of Hawaii relating to public lands. . . shall continue in force until Congress shall otherwise provide." Thus, the public lands of Hawaii are owned as follows: The United States owns legal title and certain rights to withdraw such lands for public purposes, and the Territory of Hawaii is the present owner of the equitable title, coupled with the power of administration, subject only to said right of withdrawal.

Under the circumstances, an exchange of damaged lands for lands equal to their value before the damage occurred would result



in a loss by the United States only so far as legal title is concerned. The Territory would suffer any resulting loss in beneficial interest. It is true, however, that the right of withdrawal would be transferred to the lands acquired by the Territory.

Since the public land laws of the Territory are frozen until Congress acts, the Territory has no way to remedy the losses from tidal waves through exchange programs. The Territory could, of course, pass disaster-relief legislation which would compensate or otherwise aid those injured by the tidal wave. The Territory apparently believes that an exchange program such as contemplated by the bill would be a more businesslike approach and perhaps a more satisfactory remedy for those who wish to continue their activity in a location removed from the tidal wave danger. The bill is intended, the committee is informed, to establish machinery necessary to encourage occupants to move away from the danger areas.

Delegate BURNS has informed me that the best precedent for this bill is furnished by Public Law 844 of the 84th Congress, by which the Territory was authorized to exchange public lands for lands which had been covered by lava, after a volcanic eruption. The value of the land was required to be equal as of the date just preceding the eruption, and without regard to the value of the crops or improvements.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

#### RELIEF OF CERTAIN ALIENS

The joint resolution (H. J. Res. 635) for the relief of certain aliens was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. EASTLAND. Mr. President, I offer several amendments, and ask that they be stated.

The PRESIDING OFFICER. The amendments will be stated.

The LEGISLATIVE CLERK. On pages 2 and 3, it is proposed to strike out sections 3 and 4, and insert the following new section 3:

SEC. 3. The Attorney General is authorized and directed to cancel any outstanding orders and warrants of deportation, warrants of arrest, and bonds, which may have issued in the cases of Ramon Rodriguez and Pedro Flores-Carrillo.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time and passed.

#### BILLS PASSED OVER

The bill (H. R. 11668) to amend section 39 of the Trading with the Enemy

Act of October 6, 1917, as amended, was announced as next in order.

Mr. TALMADGE. Over, Mr. President, as not being proper calendar business.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 12126) to provide further protection against the introduction and dissemination of livestock diseases, and for other purposes, was announced as next in order.

Mr. HRUSKA. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 11477) to amend chapter 223 of title 18, United States Code, to provide for the admission of certain evidence, and for other purposes, was announced as next in order.

Mr. TALMADGE. Over, as not being proper calendar business.

The PRESIDING OFFICER. The bill will be passed over.

#### MEXICAN FARM LABOR

The bill (S. 4232) to amend title V of the Agricultural Act of 1949, as amended was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Be it enacted, etc.,* That section 509 of the Agricultural Act of 1949, as amended, is amended by striking out "June 30, 1959" and inserting "June 30, 1960."

#### BILLS PASSED OVER

Mr. TALMADGE. Mr. President, I ask that the following bills be passed over:

Calendar No. 2241, S. 2142, extension of restrictions on imported citrus fruits, figs, and fig paste;

Calendar No. 2248, S. 3648, Navaho Indian irrigation project and the San Juan-Chama project;

Calendar No. 2249, S. 654, enforcement of State statutes prescribing criminal penalties for subversive activities; and

Calendar No. 2251, H. R. 6894, unmanufactured mica and mica films and splittings.

The PRESIDING OFFICER. The bills will be passed over.

#### OPPORTUNITIES FOR SMALL-BUSINESS CONCERNS TO OBTAIN GOVERNMENT BUSINESS

The Senate proceeded to consider the bill (S. 3224) to improve opportunities for small-business concerns to obtain a fair proportion of Government purchases and contracts to facilitate procurement of property and services by the Government, and for other purposes, which had been reported from the Committee on Government Operations, with amendments, on page 3, line 14, after the word "payments", to strike out "made"; on page 4, line 2, after the word "and", to strike out "submitting" and insert "substituting"; in line 6, after "section 305 (a)", to insert "and"; after line 14, to strike out:

SEC. 7. Section 214 of the Small Business Act of 1953 (67 Stat. 238), as amended (15 U. S. C. 643), is amended further by striking

out the period at the end thereof and substituting therefor a comma and the following: "or (C) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns. These determinations may be made for individual awards or contracts or for classes of awards or contracts."

At the beginning of line 24, to change the section number from "8" to "7"; on page 5, at the beginning of line 3, to change the section number from "9" to "8"; at the beginning of line 9, to change the section number from "10" to "9"; in line 21, after the word "and", to insert "after"; in line 24, after the word "the", where it appears the first time, to strike out "Government" and insert "United States"; on page 6, line 3, after the word "then", to strike out "shall be" and insert "is", in the same line, after the word "to", to strike out "all" and insert "any"; at the beginning of line 5, to change the section number from "11" to "10"; at the beginning of line 8, to change the section number from "12" to "11", and, at the beginning of line 11, to change the section number from "13" to "12"; so as to make the bill read:

*Be it enacted, etc.,* That section 302 (a) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393), as amended (41 U. S. C. 252 (a)), is amended further to read as follows:

"(a) The provisions of this title shall be applicable to purchases and contracts for property or services made by—

"(1) The General Services Administration, for the use of such agency or otherwise; or

"(2) any other executive agency (except the departments and activities specified in title 10, United States Code, section 2303 (a)) in conformity with authority to apply such provisions delegated by the Administrator in his discretion. Notice of every such delegation of authority shall be furnished to the General Accounting Office."

SEC. 2. Section 302 (c) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393), as amended (41 U. S. C. 252 (c)), is amended further—

(a) by revising paragraph (3) to read: "(3) the aggregate amount involved does not exceed \$2,500;"

(b) by renumbering paragraphs (9), (10), (11), (12), (13), and (14) as paragraphs (10), (11), (12), (13), (14), and (15), respectively; and

(c) by adding, immediately after paragraph (8), a new paragraph (9), reading as follows:

"(9) for perishable or nonperishable subsistence supplies."

SEC. 3. Section 302 (e) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394; 41 U. S. C. 252 (e)) is amended by striking out "(9)," "(10)," "(11)," and "(13)," and substituting therefor "(10)," "(11)," "(12)," and "(14)," respectively.

SEC. 4. Section 305 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 396), as amended (41 U. S. C. 255), is amended further to read as follows:

"SEC. 305. (a) Any executive agency may—

"(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

"(2) insert in bid solicitations for procurement of property or services a provision limiting to small-business concerns advance or progress payments.







Public Law 85-791  
85th Congress, H. R. 6788  
August 28, 1958

AN ACT

72 Stat. 941.

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

Administrative  
agencies.  
Record on re-  
view and en-  
forcement of  
orders.

"2112. Record on review and enforcement of agency orders."

"SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

§ 2112. Record on review and enforcement of agency orders

Rules for  
filing.

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court



designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

Exceptions.

"(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts."

Federal Trade  
Commission.  
15 USC 45.

SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112), is amended to read as follows: "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

15 USC 45.

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112-113), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States

Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113), is amended to read as follows:

15 USC 45.

"(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

SEC. 4. (a) The sixth sentence of the second paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), is amended to read as follows: "Until the record in such hearing shall have been filed in a United States court of appeals, as hereinafter provided, the Commission or Board may at any time, upon such notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

ICC, FCC, CAB  
and Federal  
Reserve.

15 USC 21.

(b) The first and second sentences of the third paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1127), are amended to read as follows: "If such person fails or neglects to obey such order of the Commission or Board while the same is in effect, the Commission or Board may apply to the United States court of appeals, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall file the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission or Board until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission or Board."

15 USC 21.

(c) The second and third sentences of the fourth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission or Board and thereupon the Commission or Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or Board as in the case of an application by the Commission or Board for the enforcement of its order, and the findings of the Commission or Board as to the facts, if supported by substantial evidence, determined as provided in section 10 (e) of the Administrative Procedure Act, shall in like manner be conclusive."

15 USC 21.

60 Stat. 243.  
5 USC 1009.

(d) The fifth paragraph of section 11 of the Act of October 15, 1914, as amended (64 Stat. 1128), is amended to read as follows:

15 USC 21.

"Upon the filing of the record with it the jurisdiction of the United States court of appeals to enforce, set aside, or modify orders of the Commission or Board shall be exclusive."

SEC. 5. The fourth and fifth sentences of the first paragraph of section 2 of the Act of July 28, 1916 (39 Stat. 425), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Post Office Department and thereupon the said Department shall file in the court the record, as

Post Office.

39 USC 576.



provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside or modify the order of the Department."

Agriculture.  
7 USC 193.

SEC. 6. (a) Subsection (c) of section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part."

7 USC 194.

(b) Subsections (b), (c), and (d) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), are amended to read as follows:

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

7 USC 194.

(c) The first sentence of subsection (h) of section 204 of the Packers and Stockyards Act, 1921 (42 Stat. 162), is amended to read as follows:

"(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree."

62 Stat. 928.

Contract-  
Market Com-  
mission.  
7 USC 8.

SEC. 7. (a) The third and fourth sentences of paragraph (a) of section 6 of the Commodity Exchange Act (42 Stat. 1001), are amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, Chairman of said Commission, or any member thereof, and the said Commission shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the said Commission, duly filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case."

7 USC 9,15.

(b) The seventh and eighth sentences of paragraph (b) of section 6 of the Commodity Exchange Act (42 Stat. 1002), as amended, are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the



Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive."

SEC. 8. The third and fourth sentences of the second paragraph of subsection (b) of section 641 of the Tariff Act of 1930, as amended (49 Stat. 865), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC. 9. The second sentence of subsection (a) of section 9 of the Securities Act of 1933 (48 Stat. 80) is amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 10. The second and third sentences of subsection (a) of section 5 of the Securities Exchange Act of 1934 (48 Stat. 901) are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, and enforce or set aside such order, in whole or in part."

SEC. 11. The third sentence of subsection (c) of section 18 of the Act of June 18, 1934 (48 Stat. 1002), is amended to read as follows: "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28, United States Code."

SEC. 12. The second sentence of subsection (d) of section 402 of the Communications Act of 1934, as amended (66 Stat. 719), is amended to read as follows: "Within thirty days after the filing of an appeal, the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 13. (a) Subsection (d) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), is amended to read as follows:

"(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

(b) The first, second, fifth and seventh sentences of subsection (e) of section 10 of the National Labor Relations Act, as amended (61 Stat. 147), are amended to read as follows:

"(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court

Treasury.

19 USC 1641.

SEC.

15 USC 771.

15 USC 78y.

Federal Trade  
Zone Board.  
19 USC 81r.

FCC.

47 USC 402.

NLRB.

29 USC 160.

29 USC 160.

the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. \* \* \* If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. \* \* \* Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28."

62 Stat. 928.  
29 USC 160..

(c) The second and third sentences of subsection (f) of section 10 of the National Labor Relations Act, as amended (61 Stat. 148), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

Treasury.  
27 USC 204.

SEC. 14. The third and fourth sentences of subsection (h) of section 4 of the Federal Alcohol Administration Act (49 Stat. 980), as amended, are amended to read as follows:

"A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part."

SEC.  
15 USC 79x.

SEC. 15. The second and third sentences of subsection (a) of section 24 of the Public Utility Holding Company Act of 1935 (49 Stat. 834), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part."



SEC. 16. (a) Subsection (a) of section 313 of the Federal Power Act, as amended (49 Stat. 860), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act." FPC  
16 USC 8251.

(b) The second and third sentences of subsection (b) of section 313 of the Federal Power Act, as amended (49 Stat. 860), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part." 16 USC 8251.

SEC. 17. The second and third sentences of subsection (b) of section 611 of the Merchant Marine Act, 1936, as amended (52 Stat. 661), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order." Commerce.  
46 USC 1181.

SEC. 18. Subsection (c) of section 1006 of the Civil Aeronautics Act of 1938 (52 Stat. 1024), is amended to read as follows: CAB.  
49 USC 646.

"(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 19. (a) Subsection (a) of section 19 of the Natural Gas Act (52 Stat. 831), is amended by inserting at the end thereof an additional sentence reading as follows: "Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act." FPC.  
15 USC 717r.

(b) The second and third sentences of subsection (b) of section 19 of the Natural Gas Act (52 Stat. 831), are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part." 15 USC 717r.

SEC. 20. (a) The first and second sentences of paragraph (2) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows: HEW and Agri-  
culture.  
21 USC 346a.



"(2) In the case of a petition with respect to an order under subsection (d) (5) or (e), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

(b) The first and second sentences of paragraph (3) of subsection (i) of section 408 of the Federal Food, Drug, and Cosmetic Act, as added by the Act of July 22, 1954 (ch. 559, 68 Stat. 515), are amended to read as follows:

21 USC 346a.

"(3) In the case of a petition with respect to an order under subsection (1), a copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part."

HEW.

21 USC 371.

SEC. 21. (a) The second and third sentences of paragraph (1) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, are amended to read as follows: "A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code."

21 USC 371.

(b) The first sentence of paragraph (3) of subsection (f) of section 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055), as amended, is amended to read as follows: "Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently."

Labor.

29 USC 210.

SEC. 22. The second and third sentences of subsection (a) of section 10 of the Fair Labor Standards Act of 1938 (52 Stat. 1065), as amended, are amended to read as follows: "A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner."

Railroad

Retirement.

60 Stat. 738.

SEC. 23. The fourth, fifth, sixth, and eighth sentences of subsection (f) of section 5 of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1100), are amended to read as follows: "Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. \* \* \* No additional evi-

dence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record."

SEC. 24. (a) Subsection (c) of section 409 of the Federal Seed Act (53 Stat. 1287), is amended to read as follows: Agriculture.  
7 USC 1599.

"(c) Until the record in such hearing has been filed in a court of appeals as provided in section 410, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part."

(b) The second, third and fourth paragraphs of section 410 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows: 7 USC 1600.

"The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed, the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"At any time after such petition is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal.

"The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way."

(c) The first and second sentences of section 411 of the Federal Seed Act (53 Stat. 1288), are amended to read as follows: 7 USC 1601.

"SEC. 411. If any person against whom an order is issued under section 409 fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28, United States Code. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued."

SEC. 25. The second and third sentences of subsection (a) of section 43 of the Investment Company Act of 1940, as amended (54 Stat. 844), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part." SEC.  
15 USC 80a-42.

SEC. 26. The second and third sentences of subsection (a) of section 213 of the Investment Advisers Act of 1940, as amended (54 Stat. 855), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Com- SEC.  
15 USC 80b-13.



mission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part."

Public Health.

42 USC 291j.

SEC. 27. (a) Paragraph (1) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(b) (1) If the Surgeon General refuses to approve any application under section 625 or section 654, the State agency through which the application was submitted, or if any State is dissatisfied with the Surgeon General's action under subsection (a) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located by filing with such court a notice of appeal. The jurisdiction of the court shall attach upon the filing of such notice. A copy of the notice of appeal shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code."

42 USC 291j.

(b) The first sentence of paragraph (2) of subsection (b) of section 632 of the Act of July 1, 1944, as added by the Hospital Survey and Construction Act (60 Stat. 1048), is amended to read as follows:

"(2) The findings of fact by the Surgeon General, unless substantially contrary to the weight of the evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings."

Agriculture.

7 USC 1115.

SEC. 28. The fourth sentence of subsection (c) of section 205 of the Sugar Act of 1948 (61 Stat. 927), is amended to read as follows: "Within thirty days after the filing of said appeal the Secretary shall file with the court the record upon which the decision complained of was entered, as provided in section 2112 of title 28, United States Code, and a list of all interested persons to whom he has mailed or otherwise delivered a copy of said notice of appeal."

50 USC 793.

SEC. 29. The second and third sentences of subsection (a) of section 14 of the Internal Security Act of 1950 (64 Stat. 1001), are amended to read as follows: "A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides."

Subversive  
Activities.  
50 USC 820.

SEC. 30. (a) Subsection (e) of section 110 of the Internal Security Act of 1950 (64 Stat. 1028), is amended to read as follows:

"(e) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

50 USC 821.

(b) The third and fifth sentences of subsection (c) of section 111 of the Internal Security Act of 1950 (64 Stat. 1028), are amended to read as follows: "The Board shall thereupon file in the court the record



of the proceedings before the Board with respect to the matter concerning which judicial review is sought, as provided in section 2112 of title 28, United States Code. \* \* \* Upon the filing of such petition the court shall have jurisdiction of the proceeding, which upon the filing of the record with it shall be exclusive, and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order of the Board."

72 Stat. 950.

72 Stat. 951.

(c) The first sentence of subsection (d) of section 111 of the Internal Security Act of 1950 (60 Stat. 1029), is amended to read as follows:

50 USC 821.

"(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner, the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the record."

SEC. 31. (a) Section 6 of the Act of December 29, 1950 (64 Stat. 1130), is amended to read as follows:

FCC, Agriculture, Maritime and AEC.  
5 USC 1036.

"SEC. 6. Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of title 28, United States Code."

(b) The second sentence of subsection (c) of section 7 of the Act of December 29, 1950 (64 Stat. 1131), is amended to read as follows:

5 USC 1037.

"The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file in the court such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order."

SEC. 32. Subsection (b) of section 207 of the Act of September 23, 1950, as amended (64 Stat. 974), is amended by adding at the end of that subsection three additional sentences reading as follows: "The local educational agency affected may file with the court a petition to review such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. Upon the filing of the petition the court shall have jurisdiction to affirm or set aside the action of the Commissioner in whole or in part."

HEW.

20 USC 277.

SEC. 33. The fifth and sixth sentences of subsection (b) of section 207 of the International Claims Settlement Act of 1949, as amended (69 Stat. 564), are amended to read as follows: "Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy shall forthwith be transmitted to the said designee by the clerk of the court. Within forty-five days after receipt of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall file with the court the record of the proceedings with respect to such claim, as provided in section 2112 of title 28, United States Code."

Justice.

22 USC 1631f.

SEC. 34. The second and third sentences of section 9 of the Bank Holding Company Act of 1956 (70 Stat. 138) are amended to read as follows: "A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in sec-

Federal Reserve.  
12 USC 1848.

tion 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper."

60 Stat. 237.  
5 USC 1001  
note.

SEC. 35. This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act.

Approved August 28, 1958.

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